

भारत का राजपत्र The Gazette of India

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सं० 16] नई दिल्ली, शनिवार, अप्रैल, 21, 1990/वैशाख 1, 1912
No. 16] NEW DELHI, SATURDAY, APRIL 21, 1990/VAISAKHA 1, 1912

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii) PART II—Section 3—Sub-Section (ii)

(रक्षा मंत्रालय को छोड़ कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (other than
the Ministry of Defence)

विधि एवं न्याय मंत्रालय

(विधि कार्य विभाग)

सूचना

नई दिल्ली, 30 मार्च, 1990

क्र.आ. 1024—नोटरीज नियम, 1956 के नियम 6 के अनुसूचन में मक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री कैलाश प्रकाश एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे गाजियाबाद ज. प्रदेश व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किनो भी प्रकार का आवेदन इस सूचना के प्रकाशन के चौदह दिनों के भीतर निश्चित रूप में भेजे पास भेजा जाए।

[सं 5(13)/90-न्या.]

के.एल. शर्मा, मक्षम प्राधिकारी

MINISTRY OF LAW AND JUSTICE

(Department of Legal Affairs)

NOTICE

New Delhi, the 30th March, 1990

S.O. 1024.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries, 1956, that application has been made to the said Authority, under rule 4

of the said Rules, by Shri Kailash Prakash, Advocate for appointment as a Notary to practise in Distt. Ghaziabad (U.P.)

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(13)/90-Judl.]

K. L. SARMA, Competent Authority

गृह मंत्रालय

(राजभाषा विभाग)

नई दिल्ली, 30 मार्च, 1990

क्र.आ. 1025—वर्तमान में केन्द्रिय हिन्दी प्रशिक्षण संस्थान, राजभाषा विभाग, गृह मंत्रालय में प्रशासनिक अधिकारी के पद पर कार्यरत केन्द्रिय सचिवालय सेवा के प्रथम श्रेणी के अधिकारी श्री माम राजा को कामिक एवं प्रशिक्षण विभाग के दिनांक 27 मार्च, 1990 के पत्र संख्या-3/3/90-त.पुस. (1) के आधार पर सं.सं.पुस. (वैधान) नियम-बर्ल, 1972 के नियम 48-ए के अन्तर्गत प्रशिक्षण सेवा नियुक्ति की तारीख 31-3-1990 से अनुसूचि दी जाती है।

[संख्या-पं/पुस(5)/89 केहिप्रम]

एम.एस. मेहरा, उप सचिव

MINISTRY OF HOME AFFAIRS

(Department of Official Language)

New Delhi, the 30th March, 1990

S.O. 1025.—Shri Mam Raj, a Grade I Officer of the Central Secretariat Service, presently working as Administrative Officer, in Central Hindi Training Institute, Department of Official Language, Ministry of Home Affairs, has been permitted to retire voluntarily, under Rule 48-A, of C.C.S. (Pension) Rules, 1972, with effect from the afternoon of 31st March, 1990, vide Department of Personnel and Training's letter No. 3/3/90-C.S.(I), dated the 27th March, 1990.

[No. P/M(5)/89-CHTI]
S. S. MEHRA, Dy. Secy.

कार्मिक, लोक शिक्षा तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

प्रदेश

नई दिल्ली, 27 मार्च, 1990

का.आ. 1026:—केन्द्रीय सरकार, दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का 25) की धारा 6 के साथ पठित धारा 6 की उपधारा (1) द्वारा प्रस्तुत शक्तियों का प्रयोग करते हुए, गुजरात, मेघालय, पंजाब और तमिलनाडु की सरकारों की सहमति से, स्वायत्त शोध और मनः प्रभावों परीक्षण अधिनियम, 1985 (1985 का 61) की धारा 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 और 32 के अर्वाचन दण्डनीय अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और अधिकारिता का विस्तार अपूर्ण गुजरात, मेघालय, पंजाब और तमिलनाडु राज्यों पर करता है।

[संख्या 228/30/86-ए.वो.बी. II]
जी. सीतारामन, अधीन सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCE & PENSIONS

(Department of Personnel & Training)

ORDER

New Delhi, the 27th March, 1990

S.O. 1026.—In exercise of the powers conferred by sub-section (1) of section 5, read with section 6, of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government, with the consent of the Governments of Gujarat, Meghalaya, Punjab and Tamil Nadu, hereby extends the powers and jurisdiction of the members of Delhi Special Police, Establishment to the whole of the States of Gujarat, Meghalaya, Punjab and Tamil Nadu for the investigation of offences punishable under sections 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30 and 32 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985).

[No. 228/30/86-AVD. II]
G. SITARAMAN, Under Secy.

भित्त मंत्रालय

(आर्थिक कार्य विभाग)

(वैयक्तिक विभाग)

नई दिल्ली, 30 मार्च, 1990

का.आ. 1027:—भारतीय यूनिट ट्रस्ट अधिनियम, 1963 (1963 का 54 वा) की धारा (10) के खण्ड (क) के अन्वेषण में, केन्द्रीय सरकार भारतीय औद्योगिक विकास बैंक के साथ परामर्श करके, एन.ए.ए. का. आ. 1027 के अन्वेषण के अन्वेषण के पद पर तत्काल नियुक्त करता है।

[एफ. संख्या 11/34/ए.ई./88]
पी. जी. मंकड, अधीन सचिव

MINISTRY OF FINANCE

(Department of Economic Affairs)

(Stock Exchange Division)

New Delhi, the 30th March, 1990

S.O. 1027.—In pursuance of Clause (a) of Section (10) of the Unit Trust of India Act 1963 (52 of 1963), the Central Government hereby appoints, in consultation with the Industrial Development Bank of India, Dr. S. A. Dave as the Chairman of the Unit Trust of India with immediate effect.

[F. No. 11/34/SE/88]
P. G. MANKAD, Jt. Secy.

(वैयक्तिक विभाग)

नई दिल्ली, 30 मार्च, 1990

का.आ. 1028:—भारतीय स्टेट बैंक (अनुवर्गी बैंक) अधिनियम, 1959 (1959 का 38) की धारा 26 का उप धारा (2क) के साथ पठित धारा 25 का उपधारा (1) के खण्ड (क) के अन्वेषण में, केन्द्रीय सरकार, एन.ए.ए. स्टेट बैंक आफ पटियाला के कर्मकार कर्मचारियों में से श्री एन. के. गोड, हेड क्लर्क, केन्द्रीय लेखा विभाग, स्टेट बैंक आफ पटियाला, प्रधान कार्यालय, पटियाला को श्री ए.एन. शर्मा, जिन्हें भारत सरकार विन मंत्रालय, आर्थिक कार्य विभाग (वैयक्तिक विभाग) की दिनांक 5 मई 1984 का अधिसूचना संख्या एफ. 15/6/81-आई.आर. के तहत नियुक्त किया गया था, के स्थान पर 30 मार्च, 1990 से प्रारम्भ होकर तथा 29 मार्च, 1993 को समाप्त होने वाले तीन वर्ष की अवधि के लिए स्टेट बैंक आफ पटियाला के निदेशक-बोर्ड में निदेशक के रूप में नियुक्त करता है।

[संख्या 15/5/89-आई. आर.]

(Banking Division)

New Delhi, the 30th March, 1990

S.O. 1028.—In pursuance of clause (ca) of sub-section (1) of Section 25 read with sub-section (2A) of Section 26 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), the Central Government hereby appoints Shri N. K. Gaur, Head Clerk, Central Accounts Department, State Bank of Patiala, Head Office, Patiala as a director on the Board of State Bank of Patiala from among the employees of the State Bank of Patiala, who are workmen for a period of three years commencing on 30th March, 1990 and ending with 29th March, 1993 in place of Shri A. N. Sharma appointed under the Notification of the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) No. F. 15/6/81-IR dated May 5, 1984.

[No. F. 15/5/89-IR]

का.आ. 1029—राष्ट्रीय बैंक (प्रबंध और प्रबंधन) अधिनियम, 1980 के खण्ड 9 के उपखण्ड (2) के साथ पठित खण्ड 3 के उपखण्ड (ए) के अनुसरण में, केन्द्रीय सरकार, एल.एस. ए. गैट्टी, विशेष सहायक, कारपोरेशन बैंक प्रमोटेड, सलेम को दिनांक 30 मार्च, 1990 से 29 मार्च, 1993 तक तीन वर्षों की अवधि के लिए अथवा जब तक वे कारपोरेशन बैंक के एकात्मिक रूप में अपनी सेवा छोड़ नहीं देते हैं, इनमें से जो भी पहले हो, कारपोरेशन बैंक के निदेशक बोर्ड में निदेशक के रूप में नियुक्त करता है।

[नम्बर 15/6/88-अ.ई.अ.र.]

सचिव, सचिव, अथर सचिव

S.O. 1029.—In pursuance of sub-clause (b) of Clause 3 read with sub-clause (2) of Clause 9 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1980, the Central Government hereby appoints Shri S. A. Gatty, Special Assistant, Corporation Bank, Shevapet, Salem, as a Director on the Board of Directors of Corporation Bank with effect from 30th March, 1990 to 29th March, 1993 for a period of three years or until he ceases to be an employee of Corporation Bank, whichever is earlier.

[No. F. 15/6/88-IR]

S. P. BHATIA, Under Secy.

वाणिज्य संचालन

नई दिल्ली, 21 अप्रैल, 1990

का.आ. 1039—नियम (कालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 17 द्वारा प्रदत्त शक्तियों का प्रयोग करने द्वारा, केन्द्रीय सरकार निम्नलिखित (कालिटी नियंत्रण और निरीक्षण) नियम, 1964 में और संशोधन करने के लिए निम्नलिखित नियम बनाती है, अर्थात्:—

1. (1) इन नियमों का संक्षिप्त नाम नियम (कालिटी नियंत्रण और निरीक्षण) संशोधन नियम, 1990 है।

(2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे।

2. नियम (कालिटी नियंत्रण और निरीक्षण) नियम, 1964 में नियम 13 के उपनियम (3) के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:—

“(3) एक वर्ष की अवधि के लिए मान्यता दी जाएगी और समय-समय पर नवीकृत किया जा सकेगा परन्तु एक बार में तीन वर्षों से अधिक के लिए नहीं,

परन्तु यह कि जहां किसी प्राधिकरण या संगठन को अपने उत्पादों को प्रमाणित करने के लिए प्रमाणिकरण के रूप में मान्यता दी गयी है वह ऐसी मान्यता एक बार में तीन वर्षों से अधिक के लिए नहीं दी जा सकती और उसे समय-समय पर एक बार में तीन वर्षों से अधिक अवधि के लिए नवीकृत किया जा सकेगा।”

[फाईल सं. 5 (2)/90 ई.आ.ई.ए.ए.ई.पी.]

ए.के. चौधरी, निदेशक

पाठ टिप्पण:—का.आ. 3317 तारीख 1-10-1964 के अनुसार मूल नियम प्रकाशन किए गए और तत्पश्चात् निम्नलिखित द्वारा संशोधित किए गए;

का.आ. 3100 तारीख 29-09-1965

का.आ. 3965 तारीख 06-11-1967

का.आ. 2718 तारीख 23-07-1968

का.आ. 277 तारीख 18-01-1969

का.आ. 1855 तारीख 22-07-1972

का.आ. 0103 तारीख 06-01-1973

का.आ. 2603 तारीख 20-08-1977

का.आ. 2745 तारीख 23-09-1978

का.आ. 2496 तारीख 26-09-1981

का.आ. 1551 तारीख 19-03-1983

का.आ. 5227 तारीख 16-11-1985

का.आ. 5395 तारीख 30-11-1985

का.आ. 3030 तारीख 27-09-1986

MINISTRY OF COMMERCE

New Delhi, the 21st April, 1990

S.O. 1030.—In exercise of the powers conferred by section 17 of the Export (Quality Control & Inspection) Act, 1963 (22 of 1963), the Central Government hereby makes the following rules further to amend the Export (Quality Control & Inspection) Rules, 1964, namely:—

1. (i) These rules may be called the Export (Quality Control & Inspection) Amendment Rules, 1990.

(ii) They shall come into force on the date of their publication in the Official Gazette.

2. In the Export (Quality Control and Inspection) Rules, 1964 for sub-rule (3) of rule 12, the following shall be substituted, namely:—

“(3) The recognition shall be granted for a period of one year and may be renewed from time to time for periods not exceeding three years at a time.

Provided that where an authority or organisation has been recognised as an agency for certifying their own products, such recognition may be granted for a period not exceeding three years at a time and the same may be renewed from time to time for periods not exceeding three years at a time.

[F. No. 5(2)/90-EI&EP]

A. K. CHAUDHURI, Director

Foot Note : The Principal rules were published vide S.O. 3317 dated 1-10-1964 and subsequently amended by :

S.O. 3100 dated 29-09-1965

S.O. 3965 dated 06-11-1967.

S.O. 2718 dated 23-07-1968

S.O. 277 dated 18-01-1969

S.O. 1855 dated 22-07-1972

S.O. 0103 dated 06-01-1973

S.O. 2603 dated 20-08-1977

S.O. 2745 dated 23-09-1978

S.O. 2496 dated 26-09-1981

S.O. 1551 dated 19-03-1983

S.O. 5227 dated 16-11-1985

S.O. 5395 dated 30-11-1985

S.O. 3030 dated 27-09-1986

उद्योग मंत्रालय

(कम्पनी कार्य विभाग)

नई दिल्ली, 30 मार्च, 1990

क्र.आ. 1031:—एम्प्लिथेक्स टेक्स्टाइल्स प्रा. लि. द्वारा अधिनियम, 1969 (1969 का 54) का भाग 26 का उपधारा (3) के अनुसरण केन्द्रिय सरकार द्वारा हेमलाथा टेक्स्टाइल्स लि. जि.ता. पंजीकृत कार्यालय हेमलाथा टेक्स्टाइल्स या T.T. प्रा. पंजीकृतता: -522509, गुन्टूर डिस्ट्रिक्ट आन्ध्र प्रदेश में है, के पंजीकरण के निरस्तकरण को अधिसूचित करता है क्योंकि उक्त उद्योग ऐसे उपधारा में से है जिन पर उक्त अधिनियम के भाग "ब" अध्याय-III के उपबन्ध अब लागू नहीं होते हैं। (पंजीकरण संख्या 726/71)

[सं. 16/1/90-एम-3]

शशिभूषण सिंह, डी. सचिव

MINISTRY OF INDUSTRY

(Department of Company Affairs)

New Delhi, the 30th March, 1990

cancellation of the registration of M/s. Hemlatha Textiles Limited, having its registered office at Hemlatha Textiles B.P.O. Pedakani—522509, Guntur Distt. (Andhra Pradesh) the said undertaking being undertaking to which the provisions of Part A Chapter III of the said Act no longer apply. (Registration No. 726/71).

S.O. 1031.—In pursuance of Sub-section (3) of Section 26 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), the Central Government hereby notifies the

[No. 16/1/90-M. III]

S. B. SINGH, Dy. Secy.







व्याप एवं नागरिक पूर्ति मंत्रालय


(नागरिक पूर्ति विभाग)

भारतीय मानक ब्यूरो

नई दिल्ली, 21 मार्च, 1990

क्र.आ. 1032:—भारतीय मानक ब्यूरो नियम, 1987 के नियम 9 के उपनिबन्ध (1) के अनुसरण में भारतीय मानक ब्यूरो द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए भारतीय मानकों संबंधी मानक मुहर निर्धारित कर दिए गए हैं।

क्रम मानक मुहर का डिजाइन सं.	उत्पाद/उत्पाद की श्रेणी	भारतीय मानक को सं. और वर्ष	लागू होने की तिथि
1	2	3	4
1.	ISI 	हैमिकल संगोष्ठन कमाला-आरत कुंड- लित कमालियां	IS:7906(भाग 2)-1975 1987-05-16
2.	ISI 	खाद्य ग्रेड, टाइटेनियम डाइऑक्साइड	IS:8356-1977 1981-03-16
3.	ISI 	प्लास्टिक के संयोजित ब्रीकफेस	IS:9848-1981 1986-05-16
4.	ISI 	पटसन केनवस, बारीक	IS:10036(भाग 2)-1982 1989-08-16
5.	ISI 	हार्मेटिक संगोष्ठक, उष्णताप उपयोग समूह	IS:10617(भाग 1)-1983 1984-09-19
6.	ISI 	हार्मेटिक संगोष्ठक, मध्यम ताप उप- योग समूह	IS:10617(भाग 2)-1983 1987-05-01

(1)	(2)	(3)	(4)	(5)
7.		हर्मेटिक कंप्रीसर, निम्न ताप उपयोग समूह	IS : 10617 (भाग 3)—1983	1984-09-16

[संख्या सी.एम.डी/13 : 9]

MINISTRY OF FOOD AND CIVIL SUPPLIES








(Department of Civil Supplies)

BUREAU OF INDIAN STANDARDS

New Delhi, the 21st March, 1990

S.O. 1032.—In pursuance of Sub-rule (1) of the rule 9 of Bureau of the Indian Standards Rules, 1987 the Bureau of Indian Standards, hereby notifies the Standard Mark(s), for the Indian Standards given in the schedule :

THE SCHEDULE




Sl. No.	Design of the Standard Mark	Product/Class of Product	No. and year of the Indian Standard	Date of Effect
(1)	(2)	(3)	(4)	(5)
1.		Helical compression springs —cold coiled springs	IS : 7906 (Part II)—1975	1982 05 16
2.		Titanium dioxide, food grade	IS : 8356—1977	1981 03 16
3.		Brief cases, plastic moulded	IS : 9848—1981	1986 08 16
4.		Jute canvas, fine	IS : 10036 (Part II)—1982	1989 08 16
5.		Hermetic compressors, High temperature application group	IS : 10617 (Part I)—1983	1984 09 16
6.		Hermetic compressors, Medium temperature application group	IS : 10617 (Part II)—1983	1987 05 01
7.		Hermetic compressors, Low temperature application group	IS : 10617 (Part III)—1983	1984 09 16

[No. CMD/13 : 9]

नई दिल्ली, 22 मार्च, 1990

का.आ. 1033.—भारतीय मानक भूरो नियम, 1987 के नियम 9 के उपनियम (1) के अनुकरण में भारतीय मानक भूरो एवंद्वारा अधिसूचित करता है कि जिन मानक मूहों के डिजाइन, उनके शाब्दिक विवरण और सम्बद्ध भारतीय मानकों का मूह और वर्ष सहित नाम अनुसूची में दिए गए हैं, वे निर्धारित कर दिए गए हैं।

भारतीय मानक भूरो अधिनियम, 1986 और उनके अधीन बने नियमों तथा विनियमों के प्रयोजन के लिए ये मानक मूह उनके नामों से गैर नियमों से लागू होंगी :

अनुसूची					
क्र.सं.	मानक मूह का डिजाइन	उत्पाद/उत्पाद श्रेणी	सम्बद्ध भारतीय मानक संख्या और वर्ष	मानक मूह के डिजाइन का शाब्दिक विवरण	लागू होने का तिथि
(1)	(2)	(3)	(4)	(5)	(6)
1.		टॉगल स्विच, टाइप I व II	IS:3452(भाग)-1970	---	1989-08-01
2.		पूर्व प्रतिबलित कंक्रीट हेतु प्रलेपित प्रतिबल मुक्त लड़	IS:6006-1983	---	1989-08-16
3.		प्रोपोक्सोर पायसनीय माद्र	IS:9665-1981	---	1988-12-16




[संख्या सी.एम.डी./13:9]

एस. सुब्रह्मण्यन, अवर महानिदेशक

New Delhi, the 22nd March, 1990

S.O. 1033.—In pursuance of Sub-rule (1) of the rule 9 of Bureau of the Indian Standards Rules, 1987 the Bureau of Indian Standards, hereby notifies the Standard Mark(s), for the Indian Standards given in the schedule :

THE SCHEDULE

Sl. No.	Design of the Standard Mark	Product/Class of Product	No. of year of the Indian Standard	Date of Effect
(1)	(2)	(3)	(4)	(5)
1.		Toggle switches, type I & II	IS : 3452 (Part II)—1970	1989 08 01
2.		Uncoated stress relieved strand for prestressed concrete	IS : 6006—1983	1989 08 16
3.		Propoxur emulsifiable concentrates	IS : 9665-1981	1988 12 16

[No. CMD/13 : 9]

S. SUBRAMANYAN, Addl. Director General

कृषि मंत्रालय	क्रम संख्या	प्रदेश	राज्य
(कृषि और सहकारिता विभाग)			
नई दिल्ली, 29 मार्च, 1990	1. कृषि निदेशक, मिजोरम सरकार		मिजोरम
का.आ. 1034.—केन्द्रीय सरकार, उर्वरक (नियंत्रण) आदेश, 1985 की धारा 2 की उप-धारा (क) के अनुसरण में: एम्बेदार, कृषि आदेश की धारा 5 और 35 के अन्तर्गत, निम्नलिखित अधिकारियों को, प्रत्येक के सामने दक्षित राज्य में, नियंत्रक के कार्यों का प्रयोग करने के लिए नियुक्त करता है:—	2. कृषि निदेशक, बिहार सरकार		बिहार
	3. कृषि निदेशक, महाराष्ट्र सरकार		महाराष्ट्र
	4. कृषि निदेशक, राजस्थान सरकार		राजस्थान
			[सं. 1-11/89-उर्वरक विधि] आर.एम. सेठी, संयुक्त सचिव

MINISTRY OF AGRICULTURE
(Department of Agriculture and Cooperation)

New Delhi, the 29th March, 1990

S.O. 1034.—In pursuance of sub-clause(e) of clause 2 of the Fertiliser (Control) Order, 1985 the Central Government hereby appoints the following officers to exercise the functions of the Controller under clauses 5 and 35 of the said order, in the State, shown against each.

Sl.No.	Designation	State
1.	Director Agriculture Government of Mizoram.	Mizoram
2.	Director Agriculture Government of Bihar.	Bihar
3.	Director Agriculture Government of Maharashtra.	Maharashtra
4.	Director Agriculture Government of Rajasthan	Rajasthan

[No. 1-11/89-Fert.Law]
R.M. Sethi, Jt. Secy.

(कृषि अनुसंधान और शिक्षा विभाग)

(भारतीय कृषि अनुसंधान परिषद)

नई दिल्ली, 27 मार्च, 1990

का.आ. 1035—भारतीय कृषि अनुसंधान परिषद द्वारा नियुक्त स्थायी वित्त समिति के विनियमों के नियम-2(4) के अनुसरण में तथा कृषि उत्पाद उपकर अधिनियम, 1940 की धारा 7(2) में निहित प्रावधानों के अनुसरण में शासी निकाय के निम्नलिखित सदस्यों को इस निकाय द्वारा 14-3-90 से एक वर्ष की अवधि के लिए या जब तक वे शासी निकाय के सदस्य बने रहते हैं या उस समय तक के लिए जब तक कि उनके उत्तराधिकारी का विधिवत निर्वाचन नहीं हो जाता, इसमें जो भी पहले ही उस समय तक के लिए, स्थायी वित्त समिति के सदस्य के रूप में निर्वाचन कर लिया गया है।

- डा. बी.पी. गुप्ता,
कुलपति,
इंदिरा गांधी कृषि विश्वविद्यालय,
कृषक नगर, रायपुर (मध्य प्रदेश)
- डा. (श्रीमती) राजामल पी. देवधाम,
निदेशक,
अविनाशनिगम गृह विज्ञान कालेज,
कोयम्बटूर (तमिलनाडु)
- डा. पी.एन. भट्ट,
निदेशक,
भारतीय पशु अनुसंधान संस्थान,
इज्जतनगर (उत्तर प्रदेश)

4. डा. जे. एच. कंवर,
पूर्व-उपमहानिदेशक (एमेरिटस),
इन्फ्रिस्ट, पो.आ.-पल्लवेल,
हैबराबाद (आंध्र प्रदेश)

5. श्री एस. एस. अटवाल,
अटवाल हाउस,
एच-35, ग्रीन पार्क, एक्सटेंशन,
नई दिल्ली-110016

6. श्री रामबीर सिंह,
30, केसरगंज
बहराइच (उत्तर प्रदेश)

[सं. का. 2(1) 88-समन्वय]
हजारी लाल, प्रवर सचिव

(Department of Agricultural Research and Education)
(Indian Council of Agricultural Research)

New Delhi, the 27th March, 1990

S.O. 1035.—In pursuance of Regulation 2(iv) of the Standing Finance Committee Regulations framed by the Indian Council of Agricultural Research, and in pursuance of provision contained in section 7(2) of the A. P. Cess Act, 1940 the following members of the Governing Body have been elected by that body to be members of the Standing Finance Committee for a period of one year with effect from 14-3-90 or until their memberships in the Governing Body lasts or such time their successors are duly elected, whichever is earlier.

1. Dr. V. P. Shukla,
Vice-Chancellor
Indira Gandhi Krishi Vishwa Vidyalaya
Krishnagar, Raipur (M.P.).
2. Dr. (Mrs.) Rajamal P. Devadas
Director,
Avinashilingam Home Science College,
Coimbatore (T.N.)
3. Dr. P. N. Bhat
Director,
Indian Veterinary Research Institute,
Izatnagar (U.P.).
4. Dr. J. S. Kanwar,
Ex-D.D.G. (Emeritus)
ICRISAT, P.O. Patancheru,
Hyderabad (A.P.).
5. Shri S. S. Atwal,
Atwal House,
H-35, Green Park Extension,
New Delhi-110016.
6. Shri Ranavir Singh,
30, Kaisarganj,
Baharich (U.P.).

[No. F. 2(1)/88-CDN]
HAZARI LAL, Under Secy.

इलेक्ट्रॉनिकी विभाग

(कम्प्यूटर विकास विभाग)

नई दिल्ली, 22 मार्च, 1990

का.पा. 1036—सविष्य निधि अधिनियम, 1925 (1925 का 19) की धारा 8 की उपधारा (2) द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा निदेश देती है कि उक्त अधिनियम के प्रावधान अधिनियम, 1985 में सम्मिलित में स्थापित राष्ट्रीय सॉफ्टवेयर प्रौद्योगिकी केन्द्र, के कर्मचारियों के लाभार्थ स्थापित सविष्य निधि पर लागू होंगे।

[सं. 11(63)/काम्प/88-04-05 01]

ज सपाल सिंह भाटिया, प्रवर सचिव

(Department of Electronics)

(Computer Development Division)

New Delhi, the 22nd March, 1990

S.O. 1036.—In exercise of the powers conferred by sub-section (2) of section 8 of the Provident Funds Act, 1925 (19 of 1925), the Central Government hereby directs that the provisions of the said Act shall apply to the Provident Funds established for the benefit of the employees of the National Centre for Software Technology, Bombay set up in April, 1985.

[F. No. 11(63)/Comp/22-04-05/01]

J. S. BHATIA, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 2 मार्च, 1990

का.पा. 1037—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मैसर्स भारत कोकिंग कोल लि. की बरारी कोलियरी के प्रबंधन से सम्बन्धित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 1) अनुवाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को को प्राप्त हुआ था।

MINISTRY OF LABOUR

New Delhi, the 2nd March, 1990

S.O. 1037.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bararee Colliery of M/s. Bharat Coking Coal Ltd., and the workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under Section 10(1)(d) (2-A) of the Industrial Disputes Act, 1947

Reference No. 22 of 1989

PARTIES :

Employers in relation to the management of Bararee Colliery of M/s. Bharat Coking Coal Limited.

AND

Their Workmen.

PRESENT :

Shri S. K. Mitra Presiding Officer.

APPEARANCES :

For the Employers—Shri B. Joshi, Advocate.

For the Workmen—None.

STATE : Bihar

INDUSTRY : Coal

Dated, the 27th July, 1989

AWARD

By Order No. L-24012/23/87-D.IV (B)/IR (Coal-1), dated, the 1st March, 1989, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) of sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Bararee Colliery of M/s. Bharat Coking Coal Ltd. in retiring Shri Harakhdeo, Tyndal, w.e.f. 8-8-86 is justified? If not, to what relief is the workman entitled?"

2 It appears from the schedule of the terms of reference that the management of Bararee Colliery of M/s. B.C.C. Ltd. retired one of its workman, Shri Harakhdeo, Tyndal from service with effect from 8-8-86. At the instance of the concerned workman the present industrial dispute was raised and the appropriate Government was pleased to refer the above dispute for adjudication by this Tribunal

3. The order of the appropriate Government was received in this office of the Tribunal on 10-3-89. But the concerned workman did not appear nor had he filed any statement of claim complete with relevant documents etc. within 15 days from the date of receipt of the order of reference by him. Notice was issued to the concerned workman on 19-6-89 by registered post directing him to show cause by 27-7-89 as to why the case shall not be heard ex-parte. But the registered notice was returned un-delivered with the remark of the postal authority that the addressee was not traceable

4. On 30-6-89 Shri B. Joshi, Advocate appeared for the management and filed letter of authority. On the date fixed i.e. 27-7-89 Shri Joshi, Advocate, for the management was present, but the concerned workman did not appear. In the

circumstances, I have reason to believe that the concerned workman is not interested in prosecuting his case.

5. This being the position, I am constrained to pass a "no dispute award" in the present reference.

This is my award.

S. K. MITRA, Presiding Officer

[No. L-24012(23)/87-D.IV(B)/IR (Coal-I)]

का.ग्रा.1038—औद्योगिक विवाद अधिनियम, 1947 (1947 का का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स भारत कोकिंग कोल लिमिटेड की नुवदुरकी कोलियरी, ब्लॉक 2 क्षेत्र के प्रबंध-तंत्र से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 1) के पंचपट को प्रकाशित करती है।

S.O. 1038.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Nud Kherkeo Colliery of M/s. Bharat Coking Coal Ltd. and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

Reference No. 16 of 1989

PARTIES :

Employers in relation to the management of BCCL, Block II Area.

AND

Their Workmen

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers—Shri B. Joshi, Advocate.

For the Workmen—Shri D. K. Verma, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dated, the 19th July, 1989

AWARD

The present reference arises out of Order No. L-20012/134/88-D.3(A)/D-4(A), dated, the 27th January, 1989 passed by the Central Government, Ministry of Labour, in respect of an industrial dispute between the parties mentioned above. The subject-matter of the dispute has been specified in the schedule to the said order and the said schedule runs as follows :

"Whether the action of the management of Block-II Area, M/s. Bharat Coking Coal Limited, P.O. Nawagar, Dist. Dhanbad in dismissing Shri Sudhakar Tiwari is justified? If not, to what relief the workman is entitled?"

2. The dispute has been settled out of Court. A memorandum of settlement has been filed in Court. I have gone through the terms of settlement and I find them quite fair and reasonable. There is no reason why an award should

not be made on the basis of terms and conditions laid down in the memorandum of settlement. I accept it and make an award accordingly. The memorandum of settlement shall form part of the award.

3. Let a copy of this award be sent to the Ministry as required under Section 15 of the Industrial Disputes Act, 1947.

S. K. MITRA, Presiding Officer

[No. L-20012(134)/88-D.III (A)/IR (Coal-I)]

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I AT DHANBAD

Reference No. 16/89

Employers in relation to the management of BCCL, Block-II Area

AND

Their workmen

Petition of Compromise

The humble petition on behalf of the parties to the above reference most respectfully sheweth :—

1. That, without prejudice to the respective contentions of the parties, the dispute has been amicably settled on the following terms :—

Terms of Settlement

(a) That the concerned person Sri Sudhakar Tiwari will be allowed to resume his duties within 7 days from the date of submission of this joining report. In case the concerned workman will fail to report for duties within 30 days from the date of settlement he will forfeit all his right of employment under this settlement.

(b) That, the concerned workman will be paid 50% of the wages from the date of his dismissal (i.e. from 12-7-85 till the date of his resumption of his duty.

(c) That, the continuity of service of the concerned workman will be maintained considering the idle period from 12-7-85 till resumption of duty.

(d) This resolves the disputes in full.

Under the facts and circumstances stated above the Hon'ble Tribunal will be graciously pleased to accept the settlement as fair and proper and be pleased to pass the Award in terms of the settlement.

For the workmen :

For the Employers :

(1) (G. D. Pandey)
Vice-President
RCMS

(1) (G. Raj)
General Manager
Block-II Area

(2) (Sudhakar Tiwari)
Employee Concerned.

(2) (N. K. Sharma)
Personnel Manager
Block-II Area.

Witnesses :

(1) Ganga Singh
(2) Ghanshyam Prasad Sinha

नई दिल्ली, 5 मार्च, 1990

का.ग्रा.1039—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स भारत कोकिंग कोल लि. की ईस्ट बाखरिया कोलियरी, गिरिया सं. 6 के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2) धनबाद के पंचपट को प्रकाशित करती है।

New Delhi, the 5th March, 1990

S.O. 1039.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2) Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of East Baowria Colliery in Area No. VI of M/s. BCCL and their workman.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 44 of 1986

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947

PRESENT:

Shri I. N. Sinha, Presiding Officer.

PARTIES:

Employers in relation to the management of East Basuria Colliery in Area No. VI of M/s. Bharat Coking Coal Limited and their workmen.

APPEARANCES:

On behalf of the workmen: Shri B. Lal, Advocate and Shri D. K. Verma, Advocate.

On behalf of the employers: Shri R. S. Murthy, Advocate.

STATE: Bihar,

INDUSTRY: Coal.

Dhanbad, the 5th February, 1990

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-120012(251)/85-D.III(A), dated, the 6th January, 1986.

SCHEDULE

"Whether the demand of Dalit Mazdoor Sangh that the management of East Basuriya Colliery of Area No. VI of M/s. Bharat Coking Coal Limited should regularise on the employment rolls of the Colliery Wagon/Truck Loaders mentioned in the Annexure below is justified? If so, to what relief are the wagon/Truck Loaders concerned entitled?"

ANNEXURE

1. Madhav Kand Manjhi.
2. Ram Sagar Bhagat.
3. Masudan Bhuiyan.
4. Sitaram Bhuiyan.
5. Tulsi Das.
6. Brahm Dev Bhuiyan.
7. Mohan Mallah.
8. Ram Waran Mallah.
9. Saryug Mallah.
10. Ram Vilas Bhiyan.
11. Shiv Dass.
12. Rajdev Bhuiyan.
13. Nadhuni Bhagat.
14. Satan Bhuiyan.
15. Shankar Bhuiyan.
16. Balleshwar Bhuiyan.
17. Baijnath Bhuiyan.

18. Naresh Sahis.
19. Suresh Bhuiyan.
20. Yamuna Rishi.
21. Ramji Bhuiyan.
22. Baldev Bhuiyan.
23. Krishna Kumar Chaudhri.
24. Gokhul Bowri.
25. Kaushal Gope.
26. Bimal Gope.
27. Chandu Gope.
28. Naresh Gope.
29. Dinesh Gope.
30. Brijnandan Gope.
31. Suresh Gope.
32. Satrudhun Gope.
33. Shankar Gope.
34. Vinay Mahto.
35. Rajo Prasad.
36. Rameshwar Prasad.
37. Chegi Mahto.
38. Jal Pradash Paswan.
39. Shivan Gope.
40. Kedar Mahato.
41. Tilak Mahato.
42. Sukhdev Prasad.
43. Awdesh Mahto.
44. Baban Rajbhar.
45. Ganautri Paswan.
46. Babulal Prasad.
47. Laln Bhuiyan.
48. Anandi Gope.
49. Chanderdeep Gope.
50. Moti Chand Gope.
51. Shiv Kumar Gope.
52. Mohan Singh.
53. Ishwar Prasad.
54. Yogender Manjhi.
55. Vishesar Manjhi.
56. Ramotar Manjhi.
57. Ram Chariter Manjhi.
58. Ramnadh Manjhi.
59. Badri Manjhi.
60. Darbari Manjhi.
61. Ganauri Bhuiyan.
62. Budhan Mandhi.
63. Sitaram Manjhi.
64. Ayudhya Manjhi.
65. Windeshwari Manjhi.
66. Mahesh Manjhi.
67. Arjun Manjhi.
68. Bhim Manjhi.
69. Hira Manjhi.
70. Pradash Ram.
71. Pravin Kumar.
72. Sadho Manjhi.

73. Ladin Manjhi.
74. Photchand Manjhi.
75. Bhola Manjhi.
76. Bahadur Manjhi.
77. Kailash Manjhi.
78. Prakash Manjhi.
79. Shyam Dev Manjhi.
80. Sanatan Manjhi.
81. Ramdev Manjhi.
82. Navneet Kumar.
83. Diwakar Mondal.
84. Ravinder Manjhi.
85. Kailash Ray.
86. Ram Chander Prasad.
87. Ram Lakhan Prasad.
88. Seya Sharan Gope.
89. Chhotan Dhobi.
90. Shesheel Dhobee.
91. Ram Sheesh Mahto.
92. Ghutar Bhuiyan.
93. Chandershekhar Azar.
94. Kailash Rajwar.
95. Ram Prakash Ram.
96. Anandi Mondal.
97. Ramashesh Gope.
98. Mohan Chauhan.
99. Ishwar Prasad.
100. Leela Devi.
101. Rit Lal Mondal.
102. Shyam Sunder Bhuiyan.
103. Sakunti Devi.
104. Jeevan Bhuiyan.
105. Saryug Bhuiyan.
106. Aghnu Bhuiyan.
107. Ram Dev Bhuiyan.
108. Kamal Bhuiyan.
109. Bale Bhagar.
110. Jaldhari Bhuiyan.
111. Videshi Bhuiyan.
112. Raj Kumar Bhuiyan.
113. Vishnu Dev Bhuiyan.
114. Manohar Bhuiyan.
115. Nand Kumar Bhuiyan.
116. Dheeran Bowri.
117. Dudheshwar Bowri.
118. Kardhani Bhuiyan.
119. Amar Bowri.
120. Mansha Bowri.
121. Udhwa Bowri.
122. Sikara Bowri.
123. Mitra Bhian.
124. Rama Bowri.
125. Krishna Bhuiyan.
126. Narayan Bowri.
127. Naresh Bowri.
128. Suwan Bowri.
129. Kishori Bowri.
130. Ashok Bhowri.
131. Kali Pad. Bowri.
132. Ishawan Muni Bowri.
133. Sitaram Bowri.
134. Lalit Bowri.
135. Dilawar Bhuiyan.
136. Dinwar Kamin.
137. Bachua Bhuiyan.
138. Mohan Mat.
139. Mohan Bhuiyan.
140. Daywanti Bhuiyan.
141. Arjun Bhuiyan.
142. Rajo Bhuiyan.
143. Bhagwan Das Bhuiyan.
144. Bale Bhuiyan.
145. Janaki Bhuiyan.
146. Vindo Bhuiyan.
147. Chandu Bhuiyan.
148. Pratap Shahees.
149. Bado Bhuiyan.
150. Dashradh Bhuiyan.
151. Darbari Bhuiyan.
152. Bhola Bhuiyan.
153. Mangla Bhuiyan.
154. Ghanwa Kamin.
155. Rajo Bhuiyan.
156. Mangali Kamin.
157. Kaloshwari Kamin.
158. Chandwa Kamin.
159. Madah Bhuiyan.
160. Buliya Bhuiyan.
161. Krishna Bhuiyan.
162. Anarwa Kamin.
163. Kisnu Bhuiyan.
164. Shiva Bhuiyan.
165. Bhado Bhuiyan.
166. Sharda Kamin.
167. Priyariya Kamin.
168. Kailas Bhuiyan.
169. Chando Bhuiyan.
170. Garba Bhuiyan.
171. Unaki Kamin.
172. Rameshwar Bhuiyan.
173. Jaithan Bhuiyan.
174. Vijay Bhuiyan.
175. Dadhe Bhuiyan.
176. Nago Bhuiyan.
177. Rajiya Kamin.
178. Sunita Kamin.
179. Urmila Kamin.
180. Pawani Devi.
181. Amayla Kamin.
182. Sambhu Ram.
183. Govind Bhuiyan.
184. Krishna Bhuiyan.
185. Raja Ram Prasad.
186. Nawal Kishore Prasad.
187. Suresh Prasad.
188. Ram Ratan Prasad.
189. Bachchu Prasad.
190. Ram Prasad.
191. Ram Sharan Kewat.
192. Krishna Kewat.
193. Ramotar Paswan.
194. Sadhu Sharan Kewat.
195. Ramjanam Kewat.

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| 196. Janaki Prasad. | 251. Lakshiya Kamin. |
| 197. Jageshwar Prasad. | 252. Khemal Bhuiyan. |
| 198. Ramnandan Prasad. | 253. Amrit Prasad Ratan. |
| 199. Nagina Paswan. | 254. Surender Kumar Mondal. |
| 200. Brahmdev Kewat. | 255. Narendera Prasad Sinha. |
| 201. Rajendera Bhuiyan. | 256. Vindeshwari Sada. |
| 202. Rajenera Bhuiyan. | 257. Raghu. |
| 203. Brahmdev Bhuiyan. | 258. Kamla. |
| 204. Balu Bhuiyan. | 259. Sareshkant. |
| 205. Jyoti Bowri. | 260. Kishto Kalindi. |
| 206. Yudhishtar Sahees. | 261. Sipatiya Bowri. |
| 207. Fatesh Bhuiyan. | 262. Gopal Kalindi. |
| 208. Ram Vriksh Bhuiyan. | 263. Anil Bowri. |
| 209. Bodan Bhuiyan. | 264. Pholleshwar Manjhi. |
| 210. Birju Bhuiyan. | 265. Bhola Rajwar. |
| 211. Rajender Bhuiyan. | 266. Ram Bulak Bhuiyan. |
| 212. Dukhi Bhuiyan. | 267. Bhuneshwar Kumhar. |
| 213. Doman Bhuiyan. | 268. Shrawan Kalindi. |
| 214. Baleshwar Bhuiyan. | 269. Shankar Ravidas. |
| 215. Shyam dev Das. | 270. Jamun Yadav. |
| 216. Saryug Bhuiyan. | 271. Bhasho Yadav. |
| 217. Lakhan Bhuiyan. | 272. Babu Ram Paswan. |
| 218. Aitwari Bhuiyan. | 273. Shankar Prasad. |
| 219. Ashaagsh Thakur. | 274. Rajendera Bhuiyan. |
| 220. Munshi Buiyan. | 275. Vishnudev Thakur. |
| 221. Bara Sharma. | 276. Manohar Singh. |
| 222. Banglai Bhuiyan. | 277. Bhagwan Thakur. |
| 223. Ramchandera Ravidas. | 278. Tup Lal Mahto. |
| 224. Kailash Bhuiyan. | 279. Ramesh Singh. |
| 225. Gangiya Kamin. | 280. Naresh Singh. |
| 226. Govind Bhuiyan. | 281. Mu. Nasad Alam. |
| 227. Manti Kamin. | 282. Suresh Bhuiyan. |
| 228. Photo Bhuiyan. | 283. Vanu Bhuiyan. |
| 229. Prasadi Rajak. | 284. Dukhi Ram. |
| 230. Vilaiya Kamin. | 285. Dinesh Ram. |
| 231. Babul Bhuiyan. | 286. Vinay Kumar Sharma. |
| 232. Parbatiya Kamin. | 287. Madheshwar Mahto. |
| 233. Naresh Paswan. | 288. Norangi Bhuiyan. |
| 234. Ram Balak Paswan. | 289. Sohan Bhuiyan. |
| 235. Ramrup Bhuiyan. | 290. Rajendera Gope. |
| 236. Sunita Kamin. | 291. Paro Bhuiyan. |
| 237. Subha Kamin. | 292. Jagdish Mahto. |
| 238. Suleman Khan. | 293. Krishna Prasad. |
| 239. Renu Das. | 294. Sitaram Gope. |
| 240. Sonma Kamin. | |
| 241. Shyam Lal Singh. | |
| 242. Dular Mondal. | |
| 243. Ramdev Bhuiyan. | |
| 244. Shosho Kamin. | |
| 245. Yamuna Bhuiyan. | |
| 246. Vanshee Bhuiyan. | |
| 247. Bhasho Kamin. | |
| 248. Sohara Bhuiyan. | |
| 249. Kanshash Bhuiyan. | |
| 250. Tarni Kamin. | |

Two different sets of W. S. have been filed on behalf of the workmen. One set of W.S. has been filed by Shri Bishundeo Yadav, Secretary, Dalit Mazdoor Sangh and the other set of the W.S. has been filed by Shri A. M. Usha President of Dalit Mazdoor Sangh.

The case of the workmen is that the concerned 294 workmen were working as Wagon/Truck Loaders in East Busseriya colliery of M/s. BCCL. The concerned persons were working as Wagon/Truck Loaders since about 7 to 10 years and they also used to be engaged in the job of stacking of coal, Bharta besides doing the job of wagon/truck loaders. The management had evolved a system so that the job performed by the concerned persons used to be entrusted to gangman who were 26 in number. Those 26 gangmen were entered in the rolls of the colliery as Wagon/Truck-loaders. As a result of

this system although the concerned persons named in the annexure to the schedule of reference actually worked as Wagon/Truck Loaders but they were not put on the rolls of the employers nor they were paid the benefits of wages as envisaged in the Coal Wage Board Recommendation of 1967 and the subsequent NCWAs. Under each gangman a number of concerned persons used to do the job while the gangman actually did not do any work and receive piece rate wages for labour being performed by the concerned persons. The status of these gangmen was like contractors or Mining Sirdars. The contract system of mining Sirdari system had been abolished by all the Coal organisations including M/s. BCCL. But it is strange to find that East Busseriya colliery of M/s. BCCL has continued the contract and Sirdari system as was prevalent during the time of the private colliery owners.

The Secretary of Dalit Mazdoor Sangh filed a petition before the RLC(C), Dhanbad whereupon the RLC(C) directed the LEO(C) Shri B. R. Mondal to make a spot enquiry and to submit a report. The LEO(C) visited the railway siding of East Busseriya colliery on 10-4-84 and submitted a report to the effect that he had found the concerned persons working at the spot under 26 gangmen. He also reported that the BCCL staff of the colliery did not cooperate with him in the inspection and, on the contrary, put obstacle at the time of his spot inspection. The said report of the LEO(C) will show the genuineness of the claim regularisation of the concerned persons on the rolls of the colliery.

The performance of work of the gangman will be evident from the documents of measurement prepared by the supervisors of the East Busseriya colliery. These documents will show that the work load of the gangman was far in excess of the work load of 4½ M.T. prescribed in the Coal Wage Board recommendation, 1967. It was not humanly possible for the gangman to do so much of work per day which was far in excess of the prescribed workload and this will also show that the output shown in the accounts of each gangman included the output of some of the concerned persons engaged to work under each gangman. In lieu of the work done by the concerned persons the gangman used to give a paltry amount of money to the concerned persons and the gangman used to take the major portion of the wages. The management of East Busseriya colliery was fully aware of the said unfair labour practice but even then permitted the said system to continue in spite of the direction of the higher authority to abolish Sirdari system.

The Secretary of Dalit Mazdoor Sangh raised an industrial dispute in respect of the concerned persons before the ALC(C), Dhanbad on 7-2-84. A conciliation proceeding was started. The management during conciliation took a stand that the gangmen were only Wagon/Truck Loaders of East Busseriya colliery but the said stand of the management was refuted by the report of the LEO(C) who after inspection had found the real situation and had made a report thereon. The conciliation before the ALC(C) failed and thereafter the present reference was made to this Tribunal for adjudication.

On the above facts it is submitted by the workmen that the action of the management in not putting the concerned persons on the rolls of the company as Wagon/Truck Loaders is unjustified. It is prayed that the management be directed to put the concerned persons on the roll of the colliery atleast from the date when this dispute was raised before the management by the union. It is also prayed that since the job of wagon/truck loaders was performed by the concerned persons instead of the gangmen they should be paid difference of back wages.

The case of the management is that there was no employer and employee relationship between the concerned persons and the management and that the concerned persons are strangers to the colliery. The concerned persons were never the members of the Dalit Mazdoor Sangh. East Busseriya colliery was previously owned by a private company which was nationalised with effect from 1-5-73 under the Coal Mines (Nationalisation) Act, 1973. RCMS and Bihar Colliery Kamgar Union are well established registered trade unions which are functioning in East Busseriya colliery from the very be-

ginning. These union are very vigilant and were taking up the grievances and demands of the workmen with the management from time to time. As the concerned persons were never employed in East Busseriya colliery and were absolute strangers, neither RCMS nor Bihar colliery Kamgar Union took up the case of the concerned persons. The present reference has resulted due to the fraud and conspiracy against the management indulged by Shri Bishundeo Yadav and has also ciates and anti-social element. Shri B. R. Mondal, LEO(C), Dhanbad also became a party to the conspiracy master minded by Shri Bishundeo Yadav.

Shri B.R. Mondal, LEO(C), Dhanbad visited East Busseriya colliery along with Shri Bishundeo Yadav and three other musclemen with mala fide intention on 10-6-84. He directly went to one of the sidings of East Busseriya colliery and with the connivance of Shri Bishundeo Yadav and his associates organised a plan for induction of 297 persons into the employment of East Busseriya colliery in an illegal manner. They had gone in a taxi hired by Shri Bishundeo Yadav. Due to the illegal act of Shri B. R. Mondal in collusion of Shri Bishundeo Yadav a grave situation was created in the colliery on 10-4-84. The Loading Supervisor on duty informed the Supdt. of Mines of the colliery about the explosive situation and thereafter the Supdt. of Mines informed the Post Commandant, CISF to look into the matter as a result of which the situation could be brought under control. The Loading of the wagons remained stopped due to the illegal acts committed by Shri Mondal on 10-4-84. The management brought the said matter to the notice of the RLC(C), Dhanbad. The LEO(C) had brought with him a previously prepared statement purported to contain the names and signature/LTI of 297 persons in order to show that the concerned persons were working as Wagon Loaders in the colliery for some years. The said act on the part of the LEO(C) was out and out a fraudulent attempt to illegally induct the concerned persons into the employment of East Busseriya colliery. The list of the wagon loaders prepared by the LEO also contains the names of the relative of Shri B. R. Mondal. The LEO(C) had stayed at East Busseriya colliery for a total period of 2 hours on 10-4-84 and it was not possible for him during the said short period to have recorded statement of as many as 294 persons. The LEO(C) gave a notice dated 14-6-84 to the management enclosing the purported list stated to have been prepared by him at the railway siding after the expiry of more than 2 months of his visit to the colliery. The delay in sending the said notice to the management will indicate that during the intervening period the LEO(C) was fabricating document in collusion with Bishundeo Yadav and other interested persons.

While the industrial dispute raised by Shri Bishundeo Yadav was pending before the ALC(C), Dhanbad, Shri Karu Ram, Dalit Mazdoor Sangh sent communication to the management as well as the ALC(C) Dhanbad and other authorities stating that Shri Bishundeo Yadav was not the office bearer of Dalit Mazdoor Sangh and that he had no authority to raise any industrial dispute. The ALC(C) Dhanbad deliberately suppressed this document and submitted a failure report to the Ministry of Labour, Government of India.

East Busseriya colliery has two railway sidings. The said colliery had adequate number of wagon loaders on its roll for undertaking the job. The coal was despatched by the colliery by rail as well as by road. The despatch of coal by road related to local sale of coal for which the purchaser/consumers used to bring their own trucks. The loading of coal in to the trucks was done by the consumers themselves with the men engaged by them in some cases and sometimes the workers of the management also used to load the trucks. For sometime the coal was loaded into the trucks by mechanical means through tipplers. In 1982 the management introduced a system of loading the coal into the railway wagons by pay loaders in order to expedite the loading of wagons. The management all along maintained the records relating to the wagon loaders engaged by them for loading of coal into the railway wagons and trucks and the names of such wagon loaders were entered in Form B Register and identity card register of the colliery. Their attendance was maintained in Form E Register maintained under the Mines rules. Measurement slips were issued to the wagon loaders employed by the management in regard to the quantum of work

done by them and the wages for the actual work done by the different wagon loaders were directly paid by the management. None of the concerned persons were ever engaged by the management on any wagon loading work or on any other work and they are strangers to the colliery. It is submitted on behalf of the management that in the facts of the case, the demand for regularisation of the concerned persons in the employment of the colliery is baseless and fraudulent and the question of regularisation of such strangers and putting them on the rolls of the colliery can never arise. It is therefore prayed that it may be decided that the demand as referred to in the reference order is not justified and that the concerned persons are not entitled to any relief.

The points for decision in this case are :—

- (1) Whether there was relationship of employer and employee between the management of East Busseriya colliery and the concerned persons,
- (2) Whether the concerned persons were working as Wagon/Truck Loaders in East Busseriya colliery under different gangmen since long, and
- (3) Whether the concerned persons are entitled to any relief?

The workmen examined 4 witnesses and the management examined five witnesses in support of their respective case. The documents of the management have been marked Ext. M-1 to Ext. M-12. The documents of the workmen have been marked Ext. W-1 to W-5.

Point Nos. 1 and 2

Point Nos. 1 and 2 have been taken up together for discussion as they are inter connected.

According to the case of the workmen themselves it will appear that none of the records of the management contain the names of the concerned persons to show that they were under the employment of the management of East Busseriya colliery. According to them they were engaged by the management for loading of coal in the wagons and for stacking of coal at the hard coke bhatta and railway sidings and that the management used to show the quantity of their work done in the name of departmental wagon loader of the colliery who were popularly known as gangman and the concerned persons were paid wages not on the basis of their piece rate work but on monthwise basis. In order to show that the concerned persons were engaged by the management of East Busseriya colliery it has first been tried to be established that the work of loading and stacking as shown against the individual wagon loader on the roll of the company was far in excess to the work which could be done by an individual wagon loader. It is stated that 20 to 25 M.T. of loading and stacking per day is shown against the individual although the norm of work fixed by the Coal Wage Board agreement is 4.5 M.T. per working day per man. Ext. M-10 is the stacking report of East Busseriya colliery for the period stated in it. It gives the figure of stacking of steam, soft coke manufacturing, stacking of slack and stacking of rejected soft coke. Ext. M-9 series are measurement slips for wagon/truck loaders regarding slack and soft coke. Ext. M-10 series also gives the names of the wagon loaders who had worked in group and their attendance along with loading of the soft coke and slack coke on each date by the group of wagon loaders whose attendance is shown for the last fortnight and the first fortnight of the month. On perusal of Ext. M-10 it will appear that the quantity of work of stacking done by the wagon loaders shown against the name of each workman was far more than a wagon loader could do in a day. Ext. M-10 will further show that the quantity of stacking shown in it is not of single individual wagon loader but it is in respect of one named wagon loader and others. It is thus clear that the work shown in Ext. M-10 is not the work done by a single individual but is a work of group of wagon loaders and the name of wagon loader is given in Ext. M-10 to show that he was the group loader as admittedly the wagon loaders work in group. If we look

to Ext. M-9 series it itself speaks that the work of loading shown to have been done in each day was not the work of a single individual wagon loader but the same was the result of the work of a group of wagon loaders whose names and attendance are shown in it. Thus Ext. M-9 series do not exactly shown the work of wagon loading to be in excess of the work which could be done by group of a wagon loader. WW-3 Ram Bhajan is a wagon loader on the roll of East Busseriya colliery. He has stated that 6 or 7 other persons used to load wagons along with him and out of them 3 or 4 were casual and the rest were permanent. He has further stated that the wages of the casual wagon loaders used to be prepared in his name. He has stated in cross-examination that measurement slips of the work of loading of the wagon loaders used to be prepared and a copy of it used to be given to them and that they got the wages in accordance with the work shown in the slip given to them. He has not filed any of the measurement slips to show that the work of 3 or 4 casual loaders were prepared in his name. He has further stated in his cross-examination that the wagon loaders get piece rated wages and that piece rated wagon loader does his utmost to earn more wages. As the wagon loaders are paid on piece rated basis it is but natural that they would try to earn their wages as much as possible and as such their work will not be confined to the minimum work load of 4.5 M.T. prescribed by the Coal Wage Board recommendation. Thus the wagon loaders load double the norm or even more than that depending upon their health and attendance. Thus the average work of a wagon loader for the man power cannot be calculated on the basis of the minimum work load of 4.5 M.T. fixed by the Coal Wage Board recommendation. The evidence of WW-3 shows that even the work of loading and stacking by the wagon loaders on the roll of the company are shown in the group with one wagon loader as the gangman as admittedly the work of loading is done in a group. Thus the exaggerated quantity of stacking of coal as shown in Ext. M-10 against the name of an individual includes the work done by some other wagon loaders on the roll of the company as is admitted by WW-3 and therefore the figure of work which apparently appear to be exaggerated against the name of an individual is not exactly the work of a single individual but is work of a group of wagon loaders including gangman and some other wagon loaders on the rolls of the company.

Ext. W-1 dated 11/13-2-84 is a memo from the Supdt. of Mines, East Busseriya colliery to Ram Prabesh Bhuja, Loading Chaprasi of East Busseriya Colliery. It shows that the Supdt. of Mines had received a complaint that some outside labourers are taken work in wagons loading, stacking and truck loading and that their wages for the work is shown against the names of the wagon loaders on the roll of the company. The Mines Supdt. warned the Loading Peon that if such outsider are seen working the loading Peon will be taken to task. This memo was written about 2 months prior to the visit of the LFO(C) (WW-2) at the railway siding. On the basis of this Ext. it has been tried to be shown that it was within the knowledge of the management that some outsider workmen were being engaged in the work of wagon loading, stacking and truck loading and their work is shown against the names of the wagon loader of the company for the purpose of the payment of their wages. This memo Ext. W-1 no doubt shows that there was a complaint of some outsider workers being engaged in the wagon loading stacking and truck loading. Ext. W-2 is a memo dated 21-3-85 by Shri Sunil Chandra Pathak, Mines Supervisor, East Busseriya Colliery to loading clerk, Bhatta Incharge loading Peon and others by which they were informed that no outsider should be allowed to work in place of any wagon loader for loading or stacking and if any wagon loader engage such outsider the outsiders should be stopped from working in the siding. This letter was sometime after the visit of the LFO(C) at the loading siding. This memo only indicates that probably some of the wagon loaders on the roll of the company were in the habit of engaging some outsiders to work in their place and such practice was ordered to be stopped by the Mines Supervisor. Neither Ext. W-1 nor Ext. W-2 mentions the name of any person who were being engaged from outside in the work of wagon loading and stacking. Ext. W-3 is almost a part of Ext. M-9 series regarding which I have already discussed. Thus these documents filed on behalf of the workmen do not establish that the concerned persons were working as wagon loaders in East Busseriya colliery.

WW-1 Madhav Kant Manjhi is one of the concerned person. He has stated that since 1973 he was working as wagon loader in East Busseriya colliery and that from 11-4-84 his work was stopped by the management. He has stated that the management did not maintain their attendance and they did not receive bonus and that the work done by the gang of wagon loaders was shown in the name of the gangman of the gang. He has stated that the payment of their wages was made to them by the Loading Supervisor and attendance clerk. He was getting wages @ Rs. 250 per month. He has stated that as wagon loader they had to do coal stacking, quenching of bhatta and loading of wagons and trucks. He has stated that the management stopped the work of all the concerned persons with effect from 11-4-84 after the visit of Shri B. R. Mondal, LEO(C) (WW-2). In cross-examination WW-1 has stated that he does not possess any paper to show that they were working as wagon loader in East Busseriya colliery. MW-4 Gobra Mallah is working as Pay loader operator in East Busseriya colliery. He became a Pay Loader operator in 1982, and worked for 2 years as Pay Loader Operator in the open cast mine and thereafter he was posted at the railway siding as Pay Loader Operator. Thus it appears that he was working at the railway siding since 1984. He has stated that prior to the introduction of the pay loader at the railway siding, there were about 125 wagon loaders of the company and about 250 to 300 unlisted wagon loaders working at the railway siding. He further states that the work done by the unlisted wagon loaders was shown in the account of work of the permanent wagon loaders working at the railway siding. In his further cross-examination he has clearly stated that he first started operating Pay loader in the railway siding in the month of December, 1984. According to the case of the concerned persons their work was stopped from 11-4-84. Thus WW-4 joined at the railway siding much after the stoppage of the work of the concerned persons and as such his evidence cannot be relied upon to show that the concerned persons were working as Wagon Loaders at the railway siding of East Busseriya colliery. Thus his evidence is not of much importance.

The most important witness examined on behalf of the concerned person is WW-2 Shri B. R. Mondal, LEO(C). He was posted at Dhanbad as LEO(C) from 15-5-82 to 15-5-85. He has stated that ALC(C), Dhanbad-V advised him vide his letter dated 21-2-84 along with the complaint and a list of loaders of East Busseriya colliery to visit colliery and to enquire into the complaint. The office copy of the said letter is Ext. W-4 in this case, and forms part of the ALC(C)'s record. WW-2 has stated that as per the instruction of ALC(C), Dhanbad he went to East Busseriya colliery on 10-4-84 along with Shri J. N. Das Clerk of the office of the RLC(C) to assist him. He has stated that he enquired into the matter and took the statement of the workmen working on the East Busseriya colliery new loading siding. He found the workmen loading coal in the wagons. He took the signature/LTI of the wagon loaders whose statement he had recorded. It appears from his evidence that he used to call the name of the wagon loaders according to the names given in the list provided by the ALC(C), Dhanbad. He has stated that he prepared his report Ext. W-5 on the basis of the statement of the workmen and he had also given the names, address and designation of the persons whose statement he had taken. Ext. W-5 will show that his report is enclosed with a chart containing the name of the Daugal name of the workmen, father's/husband's name designation, period of working, monthly wages with signature or LTI. The statement of the concerned persons had not been taken separately but it was taken at the spot one place of the list which was handed over to him by the ALC(C), Dhanbad. The said original enclosure has not been filed and a copy of it has been filed which does not actually contain the signature/LTI of any of the concerned person. WW-2 has stated that he had sent a copy of the report along with the chart of the statement to the Agent of East Busseriya colliery, General Manager, Kusunda Area, RLC(C), Dhanbad and C.M.D., BCCL. It will appear from his cross-examination that he has voluntarily retired from service on 1-11-87. He has stated that he had earlier visited the said colliery as LEO(C) twice prior to 10-4-84. He has stated that he had visited East Busseriya colliery in January, 1983 and January, 1984 and at that time had inspected in respect of various compliance of the labour laws including payment of wages and Mines rules but he had not noticed any irregularities in the mines. Thus it

appears from his evidence that he had visited Busseriya colliery just about 3 months prior to his visit on 10-4-84 but till January, 1984 there was no complaint of any irregularity in East Busseriya colliery and all the irregularities thus appear to have cropped up after January, 1984 just 3 months before the relevant period whereafter it is alleged that the work of the concerned person was stopped. If the concerned persons had been working as is the case of the workmen he must have received the complaint from them that the management was not maintaining their attendance and that they were not paid the proper wages when he had previously visited East Busseriya colliery. The absence of any such complaint from the concerned persons or the union in his prior visits shows a doubt regarding the truth of the case of the workmen as is being advanced just 3 months after his visit to East Busseriya colliery.

The truth of the evidence of WW-2 has to be judged from the circumstances which have been revealed from the evidence in the case. It will appear from the evidence of WW-2 that he reached East Busseriya colliery at 8.00 A.M. on 10-4-84, on a Taxi. He has stated that he had not submitted any T.A. Bill for 10-4-84. It was suggested to him that the Taxi was hired for him by Shri Bishundeo Yadav, Union leader who had accompanied him to East Busseriya colliery along with 3 to 4 musclemen. The fact that he had gone on a Taxi and had not charged any T.A. reveals that the Taxi fair had not been paid by him otherwise there is no reason as to why he would make such concession as not to charge T.A. Bill for his travel on Taxi. It indicates that the Taxi fair was paid by somebody. As Shri Bishundeo Yadav was doing all paise for the workmen it is quite probable that the Taxi fair had been paid by Shri Bishundeo Yadav. Although his report will show that he had found some irregularities in as much as no attendance was being maintained and no proper wages was paid to the concerned persons he did not launch any prosecution against the management. He has not explained as to why such serious irregularities was not taken notice for launching any prosecution against the management of East Busseriya colliery. Admittedly WW-2 had not taken the statement of the concerned persons separately and he had noted a common statement and he has taken the LTI/signature of the concerned persons. He has stated that he did not inform the Supdt./Manager of the colliery before his visit in the colliery at the time of enquiry and that it was a surprise visit of the enquiry. I do not think there was any reason to visit the place without taking any persons from the management before his visit so that the management may not have any grievance that the LEO(C) had done something wrong behind their back. Although in his examination-in-chief he has stated that the concerned persons were engaged in the work of loading in cross-examination he has stated that they were all standing at one siding. Thus this evidence of WW-1 only shows that the concerned persons whose address and LTI/signature had been taken were actually not doing the work of loading but all of them were standing at one of the sidings. He has stated that there was no loading staff at the siding when he had started his enquiry and that the loading staff came at the siding at about 3 P.M. He has further stated that he did not take the help of any person for the identification of the wagon loaders whose statement he has taken. It is clear therefore that the persons whose statement he had taken were not identified by any person that they were the concerned persons. He has stated that at about 4.15 P.M. the commandant had come and he had gone along with him to the Supdt. of Mines Shri Upadhyaya but WW-2 did not show the statement which he had taken. There was no reason for him to be so shy as not to disclose the irregularities to the Supdt. of Mines when he had visited him along the post Commandant. On the basis of the said evidence it has been argued on behalf of the management that actually no statement as is being stated by WW-2 was prepared at the spot and it was subsequently manipulated and that was the reason as to why the LEO(C) WW-2 did not show the statement to the Supdt. of Mines. It further appears from his evidence that there is instruction from his department that a copy of the inspection has to be delivered to the management of which receipt is taken from him but in the present case he did not give any copy to the management. There appears to be no reason as to why he had deviated from the norms of handing over a copy of the inspection report to the management soon after his inspection and enquiry.

Admittedly, WW-2 did not identify any of the concerned person and as such his evidence cannot show that the persons whose statement he had taken were actually the concerned persons. It appears from the evidence of WW-2 that a complaint in writing had been given to the ALC(C) and thereafter WW-2 was asked to visit the siding and to make a report. It is also in evidence that the list of the concerned persons had accompanied along with the complaint made before the LEO(C) by Shri Bishundeo Yadav, the union leader. It is also in evidence that the LEO(C) WW-2 was asked to report and it appears that the Labour leader had arranged to take him to the siding on taxi. Thus it was known from before about the visit of WW-2 at the siding and as such it was quite possible that the union leader had made all arrangements to collect as many persons as he could to show that they have been engaged to work as wagon loaders. Mere presence of the persons whose statement WW-2 took cannot in itself establish that they were the wagon loaders regularly engaged at the siding. The workmen have not adduced any evidence of reliable witness to show that the concerned persons were regularly working for a number of years as wagon loaders as is shown in the chart enclosed to the report Ext. M-5. There is also no evidence to show that the concerned persons were paid the wages on monthly basis as is the amount disclosed in the chart. It is all a self-serving statement devoid of any reliable evidence to establish the truth of the facts mentioned in the chart Ext. M-5.

In view of the facts, circumstances, evidence and criticism discussed above it will appear that the evidence of WW-2 cannot establish the case of the union that concerned persons were working as Wagon Loaders in East Busseriya colliery and that their work was shown in the name of the permanent wagon loaders of the company.

The management has also examined MW-1 Sital Kamin, MW-2 Mukhimani Kamin wagon loaders of the company and MW-4 Shri Sital Kumar Dutta, Loading Attendance Clerk to show that no outsiders were allowed to work as Wagon loaders and that it is not true that the work done by the concerned persons was shown against the permanent wagon loaders of the company.

In view of the discussions made above I hold that there was no relationship of employer and employee between the management of East Busseriya colliery and the concerned persons. I further hold that the concerned persons were not working as Wagon Loader/Truck Loaders in East Busseriya colliery under different gangmen since long.

Point No. 3

In view of the finding made on point Nos. 1 and 2, it follows that as there was no relationship of employer and employee between the management of East Busseriya colliery and the concerned persons and that they had not worked as wagon loaders in East Busseriya colliery under different gangmen. There is no ground for giving any relief to the concerned persons.

In the result, I hold that the demand of Dalit Mazdoor Sangh that the management of East Busseriya colliery of Area No. VI of M/s. BCCL should regularise the 294 concerned persons on the employment rolls of the colliery as wagon/truck loaders is not justified and consequently they are entitled to no relief.

This is my Award.

I. N. SINHA, Presiding Officer
[No. L-20012(251)/85-D.III(A)/IR (Coal-I)]

नई दिल्ली, 6 मार्च, 1990

का.प्र. 1040-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार, जिसमें भारत कोकिस कोल लि. की ईस्ट फुटरग कोलियरी के प्रबंधन से सम्बन्धित शिकायतों और उनके कर्मचारियों के बीच, अनुसूचन में निम्नलिखित औद्योगिक

विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम (स. 2) धनबाद, के पंचवट को प्रकाशित करती है।

New Delhi, the 6th March, 1990

S.O. 1040.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2) Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of East Katras Colliery of M/s. Bharat Coking Coal Ltd., and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO 2) AT DHANBAD

PRESENT:

Shri I. N. Sinha, Presiding Officer.

Reference No. 106 of 1985

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947

PARTIES:

Employers in relation to the management of East Katras Colliery of Messrs Bharat Coking Coal Limited and their workmen.

APPEARANCES.

On behalf of the workmen—Shri S. N. Goswami, Advocate.

On behalf of the employers—Shri B. Singh, Dy. P.M. and Shri B. Joshi, Advocate.

STATE : Bihar. INDUSTRY : Coal.

Dhanbad, the 5th February, 1990

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(87)/85-D.III(A), dated, the 16th July, 1985.

SCHEDULE

"Whether the action of the management of East Katras colliery in Area No. IV, M/s. Bharat Coking Coal Limited, in denying employment to the dependants of Smt. Lachminia Kamin, S/Shri Banwari Bhuiya, Kedar Bhuiya and Dhaneshwar Bhuiya ex-Wagon Loaders after acceptance of their resignations under Voluntary Retirement Scheme is justified? If not, to what relief the workmen concerned are entitled?"

A petition has been filed by the Vice President of the Bihar Janta Khan Mazdoor Sangh who had raised the industrial dispute in respect of the concerned workmen. Subsequently a petition was also filed by Shri S. N. Goswami, Advocate representing the workmen. In both these petitions it is stated that the union which had raised the industrial dispute does not now want to proceed further in the reference as parties have amicably settled outside the Tribunal and as such the union may be allowed to withdraw the dispute and that the reference be disposed as withdrawn. Heard Shri Goswami and Shri B. Joshi appearing on behalf of the management. The management's lawyer does not object to the withdrawal of the case.

In view of the above the demand of the workmen for employment cannot be allowed as the claim is withdrawn.

I. N. SINHA Presiding Officer
[No. L-20012(87)/85-D.III(A)/IR (Coal-I)]

नई दिल्ली, 16 मार्च, 1990

का.प्र. 1041-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मेसर्स भारत कोकिंग कोल लि. के सिजुआ क्षेत्र 5 की मुदिहीह कोलियरी के प्रबंधन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, (मं. 2) धनवाद के पंचपट को प्रकाशित करती है।

New Delhi, the 16th March, 1990

S.O. 1041.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2) Dhanbad as shown in the annexure in the industrial dispute between the employers in relation to the management of Mudidih Colliery of Sijua Area V of M/s. Bharat Cooking Coal and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri I. N. Sinha, Presiding Officer.

Reference No. 210 of 1987

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947

PARTIES:

Employers in relation to the management of Mudidih Colliery of M/s. Sijua Area-V of M/s. BCCl and their workmen.

APPEARANCES:

On behalf of the workmen—Shri B. B. Pandey, Advocate.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar. INDUSTRY : Coal.

Dhanbad, the 26th February, 1990

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. 1-24012 (200)/86-D IV(B), dated, the 7th July, 1987.

SCHEDULE

“Whether the action of the Management of Mudidih Colliery of Sijua Area-V of M/s. BCCl, P.O. Sijua, Dist. Dhanbad in superannuating Sri Sona Dusadh, Trammer on 11-9-86 is justified? If not, to what relief the workman is entitled?”

The case of the workman is that the concerned workman Shri Sona Dusadh was working as a trammer in Mudidih Colliery of Sijua Area No. V of M/s. BCCl. At the time of his employment his date of birth was mentioned in Form B Register as 9-1-1935. Accordingly the management of Mudidih Colliery recorded the date of birth of the concerned workman in C.M.P.F. records. Subsequently the management issued identity card to the concerned workman in which the date of birth of the concerned workman was noted as 9-1-1935.

The management superannuated the concerned workman from 11-9-86 without giving any notice to him although he

had not completed the age of superannuation which is 60 years in BCCl. According to the entry of age of the concerned workman as 9-1-1935 in Form B Register, identity card register and C.M.P.F. account, the concerned workman was wrongly and prematurely retired from 11-9-86. The concerned workman is therefore entitled to continue in his service till 9-1-1995 when he completes 60 years. The management has superannuated the concerned workman with effect from 11-9-86 on the basis of manipulated Form B Register in which the age of the concerned workman is stated to be 3-3-1924. The concerned workman represented to the management and thereafter raised an industrial dispute through his union. The ALC(C) started the conciliation proceeding which ended in failure and thereafter the present reference was made to this Tribunal for adjudication. There is glaring difference and discrepancies of the age of the concerned workman in the original Form B Register, identity card register and C.M.P.F. records and the so called Form B Register being maintained by the management. The management of BCCl. has finalised the procedure for determination/verification of the age of an employee on 16-1-1981 by which whenever there is any variation in the records of the management regarding age of a workman, the management after being satisfied on the merits of the case will take appropriate action for correction through age determination committee/medical board whose decision shall be final and binding on both the parties. The management did not follow the said procedure for the determination of the age of the concerned workman when there was apparently variation in the date of birth of the concerned workman in the different registers. On the above facts it is prayed that the concerned workman be reinstated from the date of his superannuation with back wages and other benefits and be superannuated when he attained the age of 60 years.

The case of the management is that the date of birth of the concerned workman was recorded as 3-3-1924 in Form B Register of the colliery maintained under Section 14 of the Mines Act, 1952 duly authenticated by the concerned workman. The date of birth so recorded is the original and the earliest in the statutory documents of the management and is conclusive proof of his age for the purpose of superannuation. The aforesaid original Form B Register was deposited in the Area office in connection with certain case and as such the retirement of the concerned workman was not affected earlier i.e. from 3-3-84. As soon as the Form B Register was made available the date of birth of the concerned workman was checked and he was superannuated as he had already crossed the age of 60 years. The identity card register was prepared subsequent to that of Form B Register. The Form B Register is the original and statutory documents wherein the concerned workman had admitted his date of birth since he had authenticated the same. The entry in the Identity card register which is at variance from Form B Register is not a legal entry and as such it is not reliable. It appears that due to clerical mistake some different date of birth was recorded in the identity card register relating to the concerned workman. The concerned workman was superannuated after considering all aspects when it was found that he had completed 60 years of age. The concerned workman therefore can have no grievance and he is not entitled to any relief.

The only point for determination in this case is whether the concerned workman has been rightly superannuated from 11-9-86.

The management and the workman have each examined one witness in support of their respective case. The documents of the management have been marked Ext. M-1 and the documents of the workmen have been marked as Int. W-1.

Ext. W-1 is the identity card issued to the concerned workman which shows his date of birth as 9-1-1935. The workmen are relying on the entry of the date of birth of the concerned workman in the identity card Ext. W-1. In para-5 of the W.S. of the management it is stated that due to clerical mistake some different date of birth has been recorded in the identity card register. Thus it appears that

the date of birth of the concerned workman recorded in the identity card Ext. W-1 is on the basis of the date of birth entered in the identity card register being maintained by the management. The management on the other hand relies on the entry made in Ext. M-1 which is a photo copy said to be obtained from original Form B Register Sl. No. 51 in Ext. M-1 relates to the concerned workman Sona Dusadh and shows that the date of birth of the concerned workman is shown as 3-3-24. According to the workman Ext. M-1 is a manipulated document and that it is not a photo copy of the original Form B Register in which the date of birth of the concerned workman was noted as 9-1-1935. In para-3 of the W.S. of the management it is stated that the date of birth of the concerned workman was recorded as 3-3-24 in Form B Register of the colliery which was duly authenticated by the concerned workman. Thus it appears that the entry in the Form B Register was authenticated by the concerned workman. On perusal Ext. M-1 it will appear that the entries against the name of the concerned workman in Form B Register Ext. M-1 neither contains the signature of the workman nor it contains LTI of the concerned workman. Ext. M-1 relating to Jogta colliery contains the names of 51 workmen but it is strange that there is no authentication in the shape of LTI/ signature of any of the concerned workmen whose names are entered in the said Form B Register. In the same volume of Form B Register of Jogta Colliery there is also Form B Register of Jogta Fire Area containing names of 60 workmen. At the end of the page some officer has signed it with a remark that it contains entries only upto Sl. No. 60. It will also appear that the signature or LTI of the workmen concerned has been taken against their respective entries. There appears to be no reason as to why the management had deviated from the practice of taking the signature/LTI of the workman concerned in Form B Register against their respective entries. It was asserted in the W.S. of the management that the entries in Form B Register Ext. M-1 was authenticated by the concerned workman but we do not find any authentication in the shape of signature/LTI

MW-1 Shri S. K. Kolav working as Personal Assistant in Mudidih Colliery since 1975 has proved Ext. M-1. He has stated that Ext. M-1 is the photo copy which has been taken from original Form B Register. He further states that the names of all the workmen of Mudidih Colliery is not mentioned in Ext. M-1 and there are 8 or 9 other volumes of Form B Register of Mudidih Colliery which contains the names of other workmen of the colliery. He has stated that the last page of Ext. M-1 contains the signature of Shri S. K. Singh, Sr. P. O. of Mudidih colliery. He has also stated that 2 volumes have been bound together in Ext. M-1, one volume containing the names of 51 workmen and the other volume containing the names of 60 persons. He has stated that the volume containing the names of 51 workmen of Ext. M-1 does not contain the signature of any officer and there is no signature of any of the workmen in the volume containing 51 names of the workmen. He has stated that the photo copy Ext. M-1 was not obtained in his presence. He was unable to say that in the original Form B Register in respect of the concerned workman his date of birth was recorded as 9-1-1935 and that the concerned workman had put his LTI against the entry of his name in Form B Register. He was also unable to say if the date of birth of the concerned workman in the identity card was recorded as 9-1-1935. He also stated that the identity card register of the concerned workman is in the office and can be filed in this case but the management did not file the same knowing fully well that the date of birth of the concerned workman was noted in it as 9-1-1935 which is almost admitted in the W.S. of the management. WW-1 is the concerned workman Sona Dusadh. He has stated that he was working in Jogta Section of Mudidih Colliery as trammer and that the management superannuated him stating that he completed 60 years of age. He has stated that the management had given him the identity card Ext. W-1 in which his date of birth is noted as 9-1-35. He has also stated that the management maintained the Form B Register in which his date of birth is mentioned as 9-1-85 and that he had given his LTI against the entry of his name in Form B Register. He has stated that the said

Form B Register has not been produced in this case by the management. As I have already discussed above the Form B Register Ext. M-1 does not contain the LTI of the concerned workman as asserted by the management in the W.S. It appears therefore that Ext. M-1 is not the Photo copy of the original Form B Register in which the name and age of the concerned workman was mentioned at the time of his appointment. In cross-examination he has stated that after about a year of his employment he received his identity card Ext. W-1 in which his date of birth was correctly noted as 9-1-1935. On perusal of the entire oral and documentary evidence there is enough room to doubt the genuineness of Form B Register Ext. M-1 containing the date of birth of the concerned workman as 3-3-1924. The identity card Ext. W-1 supplied to the concerned workman by the management mentions the age of the concerned workman as 9-1-35 and the management has admitted that the date of birth of the concerned workman in the identity card register was at variance that the age entered in Form B Register. In the circumstances, I think that the only course open to the parties is that the concerned workman be referred to the Medical Board for determination of his age and the age so determined by the Medical Board shall be final and binding on both the parties and on the basis of the age so declared by the Medical Board the concerned workman would be superannuated or he would be reinstated till the age of his superannuation as determined by the Medical Board.

In the result, I hold that the action of the management of Mudidih colliery of Sijua Area V of M/s. BCCL in superannuating the concerned workman Shri Sona Dusadh from 11-9-86 is not justified. The management is directed to constitute a medical board for the determination of age of the concerned workman within a month from the date of publication of the Award and after giving proper notice of the date of determination of age of the concerned workman by the medical board, the medical board would determine the age of the concerned workman and on the basis of the age so determined by the medical board the management would act in superannuating or reinstating the concerned workman till the date of his superannuation as determined by the Medical Board. If the Medical Board finds that the concerned workman had completed the age of his superannuation on 11-9-86, the superannuation of the concerned workman will not be interfered with. If however, the medical board find any other age of the concerned workman to be less than 60 years on 11-9-86, the concerned workman will be superannuated when he attains 60 years of age and in that case the concerned workman will also be entitled to the back wages from 11-9-1986.

This is my Award.

I. N. SINHA, Presiding Officer.
[No. L-24012(200)]86-D.IV(B)[IR(Coal I)]

नई दिल्ली, 27 मार्च, 1990

का. अ. 1042 -- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुगुण में, केन्द्रीय सरकार, हैमर्ज भारत कोकिंग कोल लि. की भूमगिया कोलियरी के प्रबन्धतंत्र में सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकागण, (सं. 2), धनवाद के पंचपट को प्रकाशित करने है, जो केन्द्रीय सरकार को 21-3-1990 को प्राप्त हुआ था।

New Delhi, the 27th March, 1990

S. O. 1042.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bhurungiya Cally of M/s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on the 21st March, 1990.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri I. N. Sinha, Presiding Officer.

Reference No. 114 of 1987

In the matter of an industrial dispute under Section 10(1)(d)
of the I.D. Act, 1947

PARTIES :

Employers in relation to the management of Bhurungiya
Project of M/s. Bharat Coking Coal Limited and
Their workmen.

AND

APPEARANCES :

On behalf of the workmen—Shri S. Bose, Secretary,
R.C.M.S. Union.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar. INDUSTRY : Coal.

Dhanbad, the 14th March, 1990

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section (10)(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012 (267)/86-D.III(A), dated the 23rd April, 1987.

SCHEDULE

“Whether the demand of Rashtriya Colliery Mazdoor Sangh that the management of Bhurungiya Project of Messrs. Bharat Coking Coal Limited should reinstate in service their workman, Shri Ram Kapil Mistry, Mason who was dismissed from service in August, 1982, is justified? If so, to what relief is this workman entitled?”

The case of the workmen is that the concerned workman Shri Ram Kapil Mistry was a permanent workman working as a Mason since before nationalisation of Coal Mines firstly at Damoda colliery of Area No. I of M/s. BCCL and thereafter on transfer to Madhuban colliery in the same Area No. I. In the administration of BCCL each area is under the Administrative control of an Area General Manager and there is no jurisdiction of one General Manager for interfering in the matter of any other Area. The overall controlling authority, irrespective of different Area, is vested with the headquarters of BCCL at Koyala Bhawan. By virtue of the said powers of the headquarters, the headquarters located at Karmik Bhawan, Seraidhella, Dhanbad by an office order dated 5th/7th August, 1976 issued of transfer order under the signature of Asstt. Personnel Manager (MP) from Madhuban colliery under Area No. I to Bhurungiya Project under Area No. III and the concerned workman was directed to join his duty in new place of posting by 14th August, 1976. The concerned workman duly complied with the said order and joined at Bhurungiya Project. On 6th April, 1977 the concerned workman was served with a chargesheet dated 6th April, 1977 under the signature of the Project Manager, Bhurungiya Project Area No. III for certain allegations said to have been committed by the concerned workman while he was working in Damoda colliery in Area No. I. The concerned workman submitted his reply to the chargesheet in writing on 13th April, 1977 denying the allegations and explaining the details. The Project Manager, Bhurungiya Project Area No. III without considering his jurisdiction to issue chargesheet for any cause of action taking place in a different area, started departmental enquiry on the chargesheet. Apart from the fact that the chargesheet was issued without jurisdiction, the departmental enquiry was conducted by the Officer of Central Bureau of Investigation (CBI) from Patna Office as Presenting officer which was illegal. In

fact it was not a departmental enquiry where the proceedings are covered CBI officers who are not the departmental officers of BCCL. As a follow up action of the said enquiry, the management of Area No. III dismissed the concerned workman from his service vide letter dated 6th/16th August, 1982 under the signature of the General Manager Mohuda area with effect from the date of service of the dismissal letter. In view of the aforesaid facts and circumstances it is submitted on behalf of the workmen that the entire action of the management taken against the concerned workman by issuing chargesheet without jurisdiction and holding an enquiry on the basis of such illegal chargesheet with the direct participation of the CBI officers and dismissing the concerned workman on the basis of such vitiated departmental enquiry is absolutely unjustified and illegal and void. It is submitted that in the circumstances the concerned workman should be treated to continue in employment and should be paid by the management of BCCL full wages and allowances for the entire period of forced idleness till he is allowed to assume duties with costs for the proceeding and all other consequential effects as if he was never dismissed from his service.

The case of the management is that the concerned workman Ram Kapil Mistry was alleged to have committed certain serious acts of misconduct while he was working at Damoda colliery of the management and was chargesheeted vide chargesheet dated 6th April, 1977. The concerned workman submitted his written explanation to the aforesaid charges vide his letter of explanation dated 13th April, 1977. After consideration of the explanation the matter was referred for an enquiry and Shri I. K. Roy the then Sr. P.O. Area No. I was appointed as an enquiry officer. The enquiry officer held a fair and proper enquiry by observing the principles of natural justice. The concerned workman was given full opportunity to cross-examine the witnesses examined on behalf of the management and was also allowed to adduce his own evidence in his defence during the course of enquiry. He was also given the opportunity to avail the services of co-worker during the enquiry of which the concerned workman fully made use of by appointing his co-worker. The enquiry officer submitted his enquiry report holding the concerned workman guilty of the charges levelled against him. The G.M. of Mohuda Area dismissed the concerned workman from service vide letter of dismissal dated 6th/16th August, 1982 agreeing with the report and finding of the enquiry officer and considering the seriousness of the misconduct. The case of the management further is that chargesheet was issued and departmental enquiry was ordered by the Project Officer Bhurungiya Project as at that time the concerned workman was working at Bhurungiya Project who had jurisdiction to do so. The enquiry was not conducted by the CBI but the CBI had presented the case of the management in the departmental enquiry and it was perfectly in order and was lawful as there was a CBI case against the concerned workman. Simply because the case was presented by the CBI in the departmental enquiry, the departmental enquiry will not be vitiated. On the above facts it is submitted on behalf of the management that the dismissal of the concerned workman was perfectly justified and lawful and the concerned workman is not entitled to any relief.

It was further prayed on behalf of the management that the Tribunal may decide the preliminary issue as to whether the enquiry was fair and proper so that in case it is held that the enquiry was not fair and proper, the management may be allowed to lead evidence before the Tribunal on merit to prove the charge against the concerned workman.

The parties were first heard on the preliminary issue whether the enquiry held into the charges against the concerned workman was fair and proper. At the very outset Shri S. Bose representing the workmen conceded that he is not going to challenge the fairness of the domestic enquiry held by the management against the concerned workman and that the case be heard on merit on the materials on the record of the enquiry proceeding. Thereafter parties were heard on merit.

Now the points for decision are :

- (1) Whether the departmental enquiry conducted by the officers of CBI from Patna office as Presenting officer was illegal?

(2) Whether the chargesheet issued to the concerned workman by the Project Manager, Bhurungiya Project Area No. III for the alleged misconduct committed while the concerned workman was working in Damoda colliery in Area No. I is without jurisdiction ? and

(3) Whether the concerned workman should be reinstated in service with all back wages since the date of his dismissal ?

The management produced all the relevant papers in connection with the enquiry proceeding held against the concerned workman and they are marked Ext. M-1 to M-5.

Point No. 1

The facts of the case are submitted. It is admitted case of the parties that the CBI officer from Patna office conducted the enquiry as Presenting officer before the enquiry officer, Ext. M-4 is the enquiry report in which it is clearly stated that the management side was represented by CBI Inspector, Patna. On perusal of the enquiry proceeding Ext. M-3 it will appear that from the very first day when the enquiry started on 24th December, 1977 Shri D. V. Singh, CBI Inspector represented the management before the enquiry officer, Shri D. V. Singh had examined Shri Ashok Kumar Chatterjee, Surveyor, Shri R. S. Gill, Shri Dandi Kumar Chatterjee and S. K. Banerjee, Head Clerk Damoda colliery on behalf of the management on 9th January, 1978. On 6th April, 1978 the same Shri D. V. Singh CBI Inspector examined Shri N. N. Singh Inspector CBI, New Delhi. On 10th May, 1979 Shri D. V. Singh did not represent the management as Presenting officer but another CBI Inspector Shri J. P. Verma again examined Shri Ashoke Chatterjee on 10th May, 1979. The proceeding of enquiry dated 4th April, 1980 will show that Shri A. Prasad, CBI Inspector represented the management as Presenting officer before the enquiry officer. The proceeding of the enquiry held on 18th April, 1980 will also show that Shri A. Prasad, CBI Inspector Patna presented the case of the management as Presenting officer before the enquiry officer. The above facts extracted from the enquiry proceeding will show that it was CBI Inspectors alone who were representing the management as Presenting officer and had examined management's witnesses in the enquiry proceeding.

The proceeding with further show that PW-1 Ashoke Chatterjee, Surveyor, R. K. Khandai, Manager, Shri S. K. Banerjee, Head Clerk, Satya Kinkar Banerjee, Shri Dandi Kumar Chatterjee were all taken before Shri N. N. Singh Inspector, CBI Patna during the enquiry of the case by the CBI in the month of February, 1976. It will thus appear that the CBI had at the initial stage made enquiry into the charges against the misconduct of the concerned workman and subsequently the CBI inspectors conducted the enquiry in the domestic enquiry as Presenting officer.

On the above admitted facts it has been submitted by the learned representative of the workmen that in a domestic enquiry presence and participation of the CBI officers at whose instance investigation was conducted violates the principles of natural justice and vitiates proceeding of enquiry by violating the basic norms of disciplinary proceeding. In support of his contention he referred to a case (B. C. Basak vrs. Industrial Development Bank of India and others) reported in 1988 Indian Factories and Labour Reports page 737. This is a decision by a Division Bench of the Calcutta High Court in which it was held:

"Whether any objection is raised on not about the presence of an outsider the adage that justice must not only be done but it must appear to have been done has to be followed in all judicial and quasi-judicial proceedings. Judged in that context we must hold that the presence of an officer of CBI during the entire proceeding, and as the records indicate to assist the enquiring officer and presenting officer in case of need clearly violated the basic norms of a disciplinary proceeding.

As in our view the presence and participation of the senior officers of Central Bureau of Investigation, Calcutta in the enquiry violated the entire proceed-

ings of enquiry we need not delve into or decide the question whether the finding of the appellate authority independent of the statements of Sri Chatterjee and Sri Mitra, who were not examined during enquiry, of the enquiry which culminated in the order of the appellate authority must therefore be quashed. On the above findings the only consequential order which should have been normally passed was one of directing a fresh enquiry in accordance with law but then considering the fact that since the alleged misdemeanour was committed more than 14 years have elapsed, we are not inclined to pass such an order."

The above case of Shri B. C. Basak is almost on the same footing as the case of the concerned workman of this case. I have already dealt in details that the entire domestic enquiry against the concerned workman was conducted by the CBI inspectors on behalf of the management as Presenting Officer. It will also appear that the preliminary enquiry of misconduct against the concerned workman was conducted by CBI officer and it appears that as CBI officers had conducted the enquiry, the CBI Inspector conducted the proceedings of the management as Presenting officer. It is clear therefore that the presence and participation of the CBI Officers in the domestic enquiry held against the concerned workman, at whose instance investigation was conducted, violates the principles of natural justice and basic norms of disciplinary proceeding and as such the entire enquiry proceeding is illegal and vitiated.

It has been submitted on behalf of the management that the Tribunal has held the domestic enquiry as fair and proper and as such the workmen are debarred from raising question that the presence and participation of the CBI officers in the domestic enquiry has violated the principles of natural justice. Their Lordships in the case referred to above have stated whether any objection is raised or not about the presence of an outsider during the entire proceeding as Presenting officer clearly violated the basic norms of disciplinary proceeding and as such the domestic enquiry held against the concerned workman and the punishment of dismissal passed on the basis of the said domestic enquiry is illegal. It would have been a different matter if the management at the very outset before hearing of the preliminary issue had come out with a prayer that as the domestic enquiry was vitiated the management should be allowed to adduce fresh evidence before the Tribunal and in that case the Tribunal would have probably allowed the prayer of the management but when the workmen already did not dispute the fairness of the domestic enquiry the management did not press that even then the management should be allowed to adduce fresh evidence before the Tribunal as the enquiry proceeding was vitiated because of the participation of the CBI Inspectors as Presenting Officer on behalf of the management in the domestic enquiry. The fact is now entirely different and the management could not be allowed to adduce fresh evidence before the Tribunal.

In the result, I hold that the departmental enquiry conducted by the officers of the CBI from Patna Officer as Presenting officer was illegal.

Point No. 2

In view of the fact that the learned representative for the workman was sure of his success on point No. 1 he did not press seriously on Point No. 2 although he had made passing reference to the evidence on the point. In view of the fact that the point was not seriously pressed I do not see the need of going into details in respect of point No. 2. This point is accordingly disposed off.

Point No. 3

I have already held while discussing point No. 1 that the dismissal of the concerned workman on the basis of illegal domestic enquiry cannot sustain having clearly violated the basic norms of disciplinary proceeding and as such it is also held that the charge against the concerned workman was not established. Accordingly the concerned workman must be reinstated to his original post from the date of his dismissal with all back wages and consequential benefits.

In the result, I hold that the demand of RCMS that the management of Bhurungiya Project of M/s. BCCL should reinstate the concerned workman Shri Ram Kapil Mistry, Mason in service from the date of his dismissal in August, 1982 is justified. The management of Bhurungiya Project is therefore directed to reinstate the concerned workman in service with effect from the date of his dismissal and should pay his all back wages and consequential benefits within one month from the date of publication of the Award.

This is my Award.

I. N. SINHA, Presiding Officer.

[No. L-20012(267)/86-D.III(A)/IR(C-I)]

का. अ. 1043 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, जिससे भारत कोकिंग कोल लि. का लोडना क्षेत्र सं. 10 के प्रबंधन से सम्बद्ध नियोजकों और उनके कर्मियों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2), धनबाद के पंचायत को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-3-1990 को प्राप्त हुआ था।

S.O. 1043.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (NO. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Lodna Area X of M/s. Bhatat Coking Coal Ltd. and their workmen, which was received by the Central Government on the 20-3-1990

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 35 of 1988

In the matter of an industrial dispute under Section 10(1) (d) of the I.D. Act 1947.

PARTIES :

Employers in relation to the management of Lodna Area X of M/s. B.C.C.Ltd. P.O. Khas Jeenagora, Dhanbad and their workmen.

APPEARANCES :

On behalf of the workman --Shri J. P. Singh, Advocate.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad, the March, 1990

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012 (98)/87-D.-IV(B), dated, the 18th January, 1988.

SCHEDULE

"Whether the action of the Management of Lodna Area X of M/s. B.C.C.Ltd., P.O. Khas Jeenagora, Distt. Dhanbad in not giving employment to Smt. Sudamia Beldarin, is justified? If not, to what relief the concerned workman is entitled?"

This dispute has been raised by the concerned person Smt Sudamia Beldarin under Section 2(a) of the I.D. Act.,

1947. Her case is that she was working as wagon loader in Lodna colliery prior to nationalisation. During the said course of her employment she became a member of C.M.P.F. organisation and was allotted CMPF Number in which she regularly contributed. In 1971 the concerned person was seriously injured while performing her duties resulting in the amputation of her right leg. At the instance of the management she was admitted in Central Hospital, Dhanbad for her treatment. At the instance of the colliery management the Ministry of Labour got an artificial limb fixed by the artificial limb centre, Puna and was declared fit. The concerned person by letter dated 23-12-71 requested the Custodian Group No. 18 Lodna Bagdigi colliery to permit her to join her duty. But she was not allowed to join duty. She approached the management of the colliery several times but the management went of putting the matter on some plea or other and finally she was told that the decision of her case would be taken by the headquarters of M/s. BCCL. By letter dated 4-7-78 the concerned person requested the CPO Karmik Bhawan Seridhoi, Dhanbad to permit her to join duty but no order was communicated to her. She again requested the Area General Manager to permit her to join duty and her letter was received by the Area office on 21-4-86. But the Area Office did not communicate result of the action taken. Thereafter she raised an industrial dispute before ALC(C), Dhanbad which has resulted in this reference. It was submitted by the management before the conciliation officer in the industrial dispute raised by the concerned person that there was no employer and employee relationship between the management of Lodna colliery of M/s. BCCL and the concerned person and that the management did not find any trace of record of her employment. The above plea of the management was not entertainable because M/s. BCCL Lodna Group of Mine by letter dated 22-1-72 admitted that the concerned workman was entitled to compensation for a sum of Rs. 4080 for the injury sustained by her. The concerned person submitted a list of 8 documents with copy to the management during conciliation proceeding in order to show that he worked in Lodna colliery, met with an accident, was hospitalised in the Central Hospital where her leg was amputated and latter on artificial limb was fixed. The action of the management in not allowing her to resume her duty is unjustified. The action of the management amounts to retrenchment under Section 25F of the I.D. Act and such action cannot be up held. On the above facts it is prayed that the services of the concerned person should be deemed to be continuous with effect from the date of accident and she should be permitted to join her duty in Lodna colliery and she should also be paid the back wages and other emoluments as admissible to her by the management of Lodna colliery of M/s. B.C.C.L.

The case of the management is that at the time of take over of Lodna colliery by the Govt. in 1971 the concerned person Smt. Sudamia Beldarin was not on the rolls of the colliery and as such she was not taken over by the Govt. at the time of take over or subsequent nationalisation of the coking coal mines. There was no employer-employee relationship between the management of Lodna colliery of M/s. B.C.C.L., and the concerned person. It appears that the concerned person was employed at Lodna colliery by the erstwhile management of Lodna prior to take over by the Govt. and nationalisation of the colliery. As per sections 4, 9 and 23 of the Coking Coal Mines (Nationalisation) Act, 1972 it has been clarified that the nationalisation is free from any inconvenience of the past period and there will be no liability for any claim whatsoever for the period prior to take over. At the time of take over and subsequent nationalisation of Coking Coal Mines a screening committee was constituted under the orders of the Ministry to scrutinise all the cases of persons who claimed to be the employees of the companies of the erstwhile management. The concerned person did not make any claim before the screening committee. If the concerned person had any claim she would have appeared before the Screening Committee for employment. The present industrial dispute is a belated and stale claim and is not fit to be entertained after such a long gap. The dispute should have been raised within a reasonable time.

Admittedly Sudamia Beldarin was injured and her one leg was amputated prior to take over and nationalisation of the coking coal mines. Due to the amputation of one leg she had become medically unfit to work on her job as a Wagon

loader. After the amputation she had become medically unfit to work as Wagon loader in terms of her employment with the erstwhile ex-employer and it appears that her service had been terminated by the ex-employer.

As her physical disability was of permanent and serious nature she could not have worked as a wagon loader. If the concerned person had any grievance she should have raised her demand against the erstwhile management at the relevant time. Admittedly she has been permanently disabled and is not physically fit to be employed as wagon loader. There can be no legal compulsion upon the management to provide her any job other than the job of wagon loader which was her original job in accordance with the contract of her employment. The concerned person has referred to a letter dated 22-1-72 from BCCL Lodna group of Mines by which the concerned person was entitled to compensation for a sum of Rs. 4080 for the injury received by her. The said letter was only an intimation to the concerned person about the deposit of her compensation with the Compensation Commissioner by the Insurer and it cannot be taken as a proof that she was taken over employee. The provision of Section 25F of the J.D. Act is not attracted as her non-employment or termination by employer was on medical ground i.e. continued ill health which does not mean retrenchment. On the above facts it is prayed on behalf of the management that the demand of the concerned person has no merit and that she is entitled to no relief.

The points for decision in this case are:—

1. Whether there was employer-employee relationship between the management of Lodna colliery of M/s. BCCL and the concerned person?
2. Whether the concerned person Sudamia Beldarin is entitled to employment in Lodna Colliery of M/s. BCCL?

The management examined 2 witnesses and the concerned person examined three witnesses in support of their respective case. The documents of the concerned person are marked Ext. W-1 to W-3. Only document of the management has been marked Ext. M-1.

Ext. M-1 is the photo copy of Form B Register of Lodna colliery of M/s. BCCL which shows at page 54 that there was one Sudamia Beldarin wife of Chamari Beldarin working as wagon loader in Lodna colliery. There is a remark against her name showing that she had left the work. On reference to the evidence of WW-2 the concerned person, Sudamia Beldarin it will appear that she is the wife of Mahadeo Beldarin. It is clear therefore that she is not Sudamia Beldarin wife of Chamari Beldarin whose name appears in the Form B Register Ext. M-1 of Lodna colliery. Thus Form B Register Ext. M-1 is of no help to the concerned person to show that she was working in Lodna colliery after nationalisation in M/s. BCCL.

Be that as it may, it has been admitted by the management that the concerned person Sudamia Beldarin had worked as Wagon Loader in Lodna colliery during the erstwhile management and prior to the take over and nationalisation of the said mine. In para-1 of the W.S. of the concerned person it is clearly stated that she was working as wagon loader in Lodna colliery prior to nationalisation and that she was seriously injured in 1971 while performing her duty. In view of the said case of the concerned person brought out in her W.S. it appears clear that she was working as wagon loader in Lodna colliery prior to nationalisation which fact is now almost admitted by the management also. WW-1 is working as Chaprasi in Lodna colliery since the time of the erstwhile management. He has stated that there was one Sudamia Beldarin working as wagon loader in Lodna colliery since the time of the erstwhile management and that Sudamia Beldarin met with an accident while working as wagon loader during the time of the private management. In cross-examination he has further clarified the matter by stating that Sudamia Beldarin got her injuries about 2 to 3 years prior to nationalisation and she was provided with an artificial

limb prior to nationalisation of the collieries. He has further stated that she had demanded for her employment prior to the nationalisation from the erstwhile management and that she was not given employment after recovery by the erstwhile management of Lodna colliery. He has further stated that the right leg of Sudamia Beldarin has been amputated and that a person whose leg has been amputated cannot lift heavy weight or cannot do the work of loading of coal. Thus according to the evidence of WW-1 the concerned person had received the injuries during the time of erstwhile management prior to nationalisation and that she had demanded for her employment from the erstwhile management prior to the nationalisation and she was refused employment. WW-2 is the concerned person herself. She has stated that she was working in Lodna colliery as wagon loader since the time of private management and had received injury while working as wagon loader. She has stated that after recovery she had requested the management of M/s. B.C.C.L. for giving her work. In her cross-examination she has completely given a go by in her W.S. that she was working as wagon loader in Lodna colliery prior to nationalisation. She has now stated that she received her injury soon after the nationalisation of the Coal Mines. She is an illiterate lady and cannot say about the date month and year of her injury and her admission in the hospital. She has stated that she is still moving with the stick in her hand. She does not remember if any medical board was held to examine her after recovery from illness and it appears that there is an attempt of suppression by her regarding her examination by the Medical Board after her recovery from injury. She has admitted that she cannot do the work of wagon loading and that she was told by the management that no employment as wagon loader will be given to her because of the injury sustained by her. WW-3 Mahabir Mallan was working in Lodna colliery from August, 1940. He has stated that the concerned person met with an accident while working as wagon loader about 15 days after nationalisation of the said coal mine and thereafter her leg had to be amputated and she was provided with artificial limb by the management. He is a retired person and know very little of reading and writing. Towards the close of her cross-examination WW-3 has stated that a person with one leg cannot do the work of loading. The fact stated by WW-3 that the concerned person met with an accident while working as Wagon loader about 15 days after the nationalisation of the said coal Mines is not in accordance with the case of the concerned person. WW-2 was in BCCL from the time of nationalisation of the Coal Mines till 1984. At the time of nationalisation of the Coal Mines he was Manager of Lodna colliery. He remained in Lodna colliery till January, 1973. He has admitted his signature on the letter Ext. W-1 dated 22-1-72. As many years have passed it is quite possible that he does not remember the accident of the concerned person. During the period of his service from 1963 to January, 1973 he had worked as Asstt. colliery Manager and Manager of the erstwhile management. In cross-examination he has stated that in case of accident in Coal Mines workman were paid compensation under Workmen's Compensation Act and papers regarding it were being maintained. Ext. W-1 dated 22-1-72 is the letter which WW-2 had written to the concerned person Sudamia Beldarin. It is stated in the letter that a sum of Rs. 4080 as her lump sum compensation has already been deposited by the Insurer M/s. Norwich Union Scottish Union Insurance Group, Calcutta on 15-12-71 with the Commissioner for workmen's compensation C/o. Sub-Divisional Officer, Dhanbad and she was requested to apply to the above official for payment of the amount in deposit. This letter does not show the liability of BCCL for the payment of the compensation for the injury sustained by the concerned person. One thing is clear from Ext. W-1 that as the compensation was deposited on 15-12-71, the concerned person must have received the injuries prior to 15-12-71. Even more important document is the concerned person's own document Ext. W-3 dated 23-12-71. This was a representation by the concerned person to the Custodian Kustore. It will appear from this representation that the concerned person had met with accident while on duty as a result of which her right leg was cut off in hospital about 9 months ago. Thus if we calculate the period of her injury with reference to 23-12-71 of which she had sent the representation to the Custodian it will appear that 9 months prior to 23-12-71 her leg was amputated in the hospital and the period comes to the month of March, 1971.

Lodna colliery was nationalised from 1-5-72 and thus even according to the concerned person she had received the injury during the time of erstwhile management prior to the nationalisation of the Coal Mines. Ext. W-1 shows that the compensation for the injury was deposited by the Insurance company on 15-12-71 and this leads us further to show that the concerned person got injury prior to nationalisation. Lodna colliery was taken over by the Govt. in October, 1971 as stated in para-2 of the W-8 of the management which has not been denied by the concerned person in her evidence. According to the management the concerned person was not on the rolls of the colliery when Lodna colliery was taken over by the Govt. in October, 1971. The concerned person has adduced no evidence to show that she was working in Lodna colliery at the time of take over or nationalisation. Had she been on the rolls of Lodna colliery at the time of take over or nationalisation she must have applied for taking in employment before the Custodian and her case must have been screened by the screening committee. I have already discussed the evidence of the workmen witness which does not establish that she was on the rolls of Lodna colliery at the time of the take over. On the contrary the evidence of WW-1 has completely negated the case of the concerned person. As the concerned person has not been able to establish that she was on the roll of the Lodna colliery at the time of take over or nationalisation, I hold that there was no relationship of employer and employee between the management of Lodna colliery of M/s. BCCL and the concerned person.

Point No. 2

In view of the fact that the concerned person was not on the rolls of Lodna colliery at the time of take over or nationalisation of the Coal Mines the management of BCCL had no liability to give employment to the concerned person who had received injuries during the period of the erstwhile management and was not on the rolls of the erstwhile management when Lodna colliery was taken over by from its erstwhile management. Section 17 of the Coal Mines (Nationalisation) Act was substituted by the Coal Mines Nationalisation Laws (Amendment) Act, 1986. The old section 17 of the Coal Mines (Nationalisation) Act, 1973 substituted section 17 by the Coal Mines Nationalisation Act, 1986. It deals with service of any officer or other employees employed in a Coking Coal Mines or coke oven plant. Old Section 17 provided that every person who is a workman within the meaning of I.D. Act and was immediately before the appointed day in the employment of Coal Mines become on and from the appointed day an employee of the Central Govt. or of the Govt. company in which the right title and interest of such mine was vested under the Act. After the substitution of Section 17 of the Coal Mines (Nationalisation) Act, 1973 by the substituted section 17 of the Coal Mines Nationalisation Law (Amendment) Act, 1986, the old section 17 was completely substituted and now there is no provision on the statute to show that a person who was a workman within the meaning of I.D. Act, 1947 and was immediately before the appointed day in the employment of Coal Mines would become on and from the appointed day an employee of the Central Govt. or the Govt. company in which the right title and interest of such mine have vested under this Act. Section 2 of the Coal Mines (Nationalisation) Laws Act, 1986 provides that the amendment to the Coking Coal Mines (Nationalisation) Act, 1972 shall be deemed to have come into force on the first day of May, 1972 and the remaining provision of Coal Mines Nationalisation Laws Act shall be deemed to have come into force on 7-10-86. Thus the substituted section 17 of the Coal Mines Nationalisation laws shall be deemed to have come into force on 1-5-72 and now a workman of the erstwhile management has no remedy left for demanding employment from the company in which the right title and interest of such mine have vested under 'रा. Act. On this score also the concerned person cannot now claim for her employment from the management of Lodna colliery of M/s. BCCL.

Smt. Sudama Baldarin is justified. She is accordingly entitled to no relief.

This is my Award.

I. N. SINHA, Presiding Officer
[No. L-24012(98)87-D IV(B)IR(C-I)]

का. अ. 1044.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मेसर्स भारत कोकिंग कोल लिमिटेड की भटडीह कोलियरी के प्रबन्धतन्त्र से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकार, (सं. 2) धनबाद के पंचपट को प्रकाशित करता है, जो केन्द्रीय सरकार को 20-3-1990 को प्राप्त हुआ था।

S.O. 1044.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bhatdee Colliery of M/s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on the 20-3-1990.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT :

Shri I. N. Sinha, Presiding Officer.

REFERENCE NO. 238 OF 1986

In the matter of an industrial dispute under Sections 10(1)(d) of the I. D. Act, 1947.

PARTIES :

Employers in relation to the management of Bhatdeeh Colliery of Messrs. Bharat Coking Coal Limited and their workman.

APPEARANCES :

On behalf of the workmen : Shri D. Mukherjee, Secretary, B.C.K. Union.

On behalf of the employers : Shri R. S. Murthy, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad, the 14th March, 1990.

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1) (d) of the I. D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012 (54/86 D. III (A), dated, the 4th July, 1986.

SCHEDULE

"Whether the demand of Bihar Colliery Kamgar Union that the management of Bhatdee Colliery of Bharat Coking Coal Limited should regularise their workman, Shri Arjun Kumar, as Excavation Fitter in Grade 'D' is justified. If so, to what relief is, the said workman entitled ?".

In this case both the parties appeared and filed their respective W. S. documents etc. Subsequently when the

In the result I hold that the action of the management of Lodna area X of M/s. BCCL in not giving employment to

case was fixed for oral evidence of parties, both the parties appeared before me and filed a joint compromise petition under their signature. I heard them on the said petition of compromise and I do find that the terms contained therein are fair, proper and beneficial to both the parties. Accordingly I accept the same and pass an Award in terms of the compromise petition which forms part of the Award as Annexure.

I. N. SINHA, Presiding Officer
[No. L-20012 (54)/86-D. III (A)/IR (Coal-I)]

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

Reference : 238/86.

PARTIES :

Employers in relation to the Management of Bhatdeh Colliery of Bharat Coking Coal Ltd., P. O. : Mehuda, Distt. Dhanbad.

AND

Their Workman.

JOINT COMPROMISE PETITION OF EMPLOYERS AND WORKMEN

The above mentioned Employers and workmen/sponsoring Union must respectfully beg to submit jointly as follows :—

(1) That the employer and the workmen/sponsoring union negotiated the dispute covered by the above reference with a view to arriving at an amicable and mutually acceptable settlement.

(2) That as result of such negotiations between the employers and the workmen/sponsoring union, the parties have agreed to settle the dispute covered by the above reference on the following terms and conditions :—

(a) It is agreed that the management shall constitute a D.P.C. for considering the case of the workman concerned for promotion to Cat. IV as fitter through D.P.C. and interview for adjudging his suitability for such a post shortly. The D.P.C. will be constituted soon after this joint compromise settlement being accepted by the Hon'ble Tribunal.

(b) It is agreed that if the workman concerned, Shri Arjun Kumar is found suitable by the D.P.C. for promotion to Cat. IV as fitter, he will be so promoted within a fortnight of the D.P.C.'s recommendations becoming available. The workmen concerned will not be entitled to any benefits for past period.

(c) That it is agreed that this is an overall agreement in full and final settlement of all the claims of the workman concerned and sponsoring union arising out of the above reference.

(3) That the employers and workman/sponsoring union consider the above terms of agreement as fair, just and reasonable to both the parties.

In view of the above the employers and the workmen/sponsoring union pray that the Hon'ble Tribunal may be pleased to accept this joint compromise petition and dispose of the reference by giving an award in terms thereof.

D. MUKHERJEE, Secy. BCKU 17-1-1990.

For and on behalf of workmen.

K. N. SINGH, General Manager,
BCCL, Muhuda Area.

For & on behalf of Employer.

ARJUN KUMAR, Workman Concerned.
RAL. S. MURTHY, Advocate for Employer

का. नं. 1045 :- औद्योगिक विवाद अधिनियम, 1917 (1947 का 14) की धारा 17 के अन्तर्गत में, केन्द्रीय सरकार, इससे भारत कोकिंग कोल लि. की भाटदेह कोलिरी के प्रबन्धन से सम्बन्धित निर्यातकों और उनके कामगारों के बीच, अन्तर्गत में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकांश, (सं. 2), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-3-90 को प्राप्त हुआ था।

S.O. 1045.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bhatdeh Colliery of M/s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on 20-3-1990.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri I. N. Sinha, Presiding Officer.

Reference No. 137 of 1987

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947

PARTIES :

Employers in relation to the management of Bhatdeh Colliery of M/s. Bharat Coking Coal Limited and their workmen.

APPEARANCES :

On behalf of the workmen—Shri A Singh Union representative K.I.M.P.

On behalf of the employers—Shri G. Prasad, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dhanbad, the 13th March, 1990

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012 (270)/86-D.III (A), dated, the 29th April, 1987.

"Whether the action of the management of Bhatdeh Colliery of Messrs Bharat Coking Coal Limited in not providing employment of her suitability to Smt. Chanda Devi, wife of late Dakshineswar Hazari, Ex-Mining Sirdar of the Colliery, in terms of Para 10.4.2 of the National Coal Wage Agreement-II was justified? If not, to what relief is she entitled?"

Soon after the receipt of the order of reference from the Ministry the same was registered. Thereafter when the case was fixed for filing W.S. by the parties, both the parties appeared before me and filed a Joint Compromise petition. I heard them on the said petition of compromise and I do find that the terms contained therein are fair, proper and beneficial to both the parties. Accordingly I accept the same and pass an Award in terms of the said Compromise petition which forms part of the Award as Annexure.

I. N. SINHA, Presiding Officer

[No. L-20012(270)/86-D.III (A)/IR (Coal-I)]

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 DHANBAD

Reference No. 137/87

PARTIES :

Employers in relation to the management of Bhatdeeh Colliery of M/s. Bharat Coking Coal Ltd.

AND

Their workmen
Joint Compromise Petition

The parties named above most respectfully submit as under :—

- (1) That the Central Government vide their Order No. L-20012(270)/86-D.III (A) dated 29-4-1987 and subsequently order of the same number dated 2nd March 1988 has referred the above matter to this Hon'ble Tribunal for adjudication with the following terms of reference :—

"Whether the action of the management of Bhatdeeh Colliery of M/s. Bharat Coking Coal Ltd. in not providing employment at her suitability to Smt. Chanda Devi wife of late Dakshineswar Hazari, Ex-Mining Sirdar of the Colliery in terms of para 16.4.2 of National Coal Wage Agreement-II was justified? If not, to what relief is she entitled?"

- (2) That while the matter is pending before the Hon'ble Tribunal the parties have discussed and negotiated for arriving at a mutually agreed amicable settlement;

- (3) That as a result of the negotiation the parties have agreed to resolve the dispute mutually on the following terms and conditions :—

(A) Smt. Chanda Devi W/o Late Dakshineswar Hazari Ex-Mining Sirdar, Bhatdeeh Colliery will be given employment as a Cat. I Mazdoor in any of the Collieries of Mohuda Area with immediate effect.

(B) This settlement is full and final and Smt. Chanda Devji will have no other claim arising out of this dispute.

- (4) That the parties consider and confirm that this settlement is just and fair to both of them.

Prayer :

The parties, therefore, most respectfully pray that the Hon'ble Tribunal may be gracious enough to accept the settlement and give an award in terms thereof.

1. Union.
- (2) Workman
for the Union

General Manager,
Mohuda Area,
For the Employer

Witnesses :-

- 1.
- 2.

Advocate
For the Employers

S.O. 1046.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Govindpur Colliery of M/s. Bharat Coking Coal Ltd. and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 73 of 1982

PARTIES :

Employers in relation to the management of Govindpur Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen

APPEARANCES :

For the Employers—Shri B. Joshi, Advocate.

For the Workmen—Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

STATE : Bihar

INDUSTRY : Coal

Dated, the 28th February, 1990

AWARD

By Order No. L-20012(211)/82-D.III (A), dated, the 23rd November, 1982, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication by this Tribunal :

"Whether the demand of the workmen of Govindpur Area No. III of Messrs Bharat Coking Coal Limited Post Office Sonardih, District Dhanbad for employment of S/Shri Nathu Deswali, Gouria Deswalia, Chetlal Chamar, Shankar Roy, Sukhlal Deswalia, Chhunilal Roy and Lakhan Bhuiya, is justified? If so, to what relief are the workmen concerned entitled and from what date?"

2. The case of the sponsoring union, Bihar Colliery Kamgar Union, as spelt out in the written statement submitted on behalf of the concerned workmen, details apart, is as follows :

Nathu Deswali and other concerned workmen had been working as permanent wagon loaders in Govindpur Colliery of M/s. B.C.C. Ltd. for long with unblemished record of service. All of them had worked continuously and put in more than 240 days attendance in each calendar year. All of them are members of the sponsoring union; the local management is very much biased and prejudiced against the members of Bihar Colliery Kamgar Union and they are always on the look out to victimise and harass the members of this union. During the time of emergency in the year 1975-76 the management stopped the concerned workmen from duty without assigning any reason and also without conducting any enquiry and paying them retrenchment compensation. After emergency was lifted the concerned workmen represented before the management for allowing them to resume their duty, but to no effect. In the circumstances, the concerned workmen and the union represented before the management to allow them to resume duties atleast as badly underground loader as per their own Circular bearing No. BCCL/PA-1/90/73795-835 dated 5-12-1980. The management appreciated the post-

का. प्र. 1046 :- औद्योगिक विवाद अधिनियम, 1947 (1947 का 19) के धारा 17 के अन्वय में, केन्द्रीय सरकार, जैसर्ज भारत कोकिंग कोल लिमिटेड की गोविन्दपुर कोलियरी के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अन्वय में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (नं. 1), धनबाद के पंचपट को प्रस्तुत करती है।

tion and the Supdt./Agent of the Colliery moved a note-sheet dated 13-12-80 for allowing the concerned workmen to resume their duty and placed it for approval of the General Manager. The management also directed the workmen to submit their photographs duly attested by D.D.O. and Mukhiya. As per direction of the management the concerned workmen submitted the certificate mentioned above, but they were not allowed to resume their duty. Seeing anti-labour policy of the management the sponsoring union raised an industrial dispute before the Asstt. Labour Commissioner (C), Dhanbad after exhausting all avenues for amicable settlement. During conciliation proceeding the union drew attention of the management to their own policy decision in terms of which workmen who had put in 75 days attendance in any of the calendar year were entitled for employment. However, the union demanded reinstatement of the concerned workmen with full back wages. But the management with an ulterior motive to victimise the concerned workmen denied the relationship of employer and employee. At the instance of the union the Conciliation Officer directed the management to produce Form B Register, Attendance Register for the Wagon Loaders and Notesheet dated 13-12-1980 but the management did not produce these documents and ultimately Conciliation proceeding ended in a failure. The appropriate Government has been pleased to refer the industrial dispute for adjudication by this Tribunal. The Union has submitted that the action of the management in terminating the services of the concerned workmen is illegal, arbitrary and unjustified and also against the principle of natural justice and the mandatory provision of Section 25-F of the Industrial Disputes Act. In the circumstances, the union has prayed that the demand of the concerned workmen for employment with full back wages be allowed.

3. The management of Govindpur Colliery of M/s. B.C.C. Ltd. has contested the demand of the sponsoring union. It has been contended by the management that the present reference is not maintainable and the demand of the union for giving employment to the concerned workman is unreasonable and without any legal foundation. The substantive case of the management is that the concerned persons were not on the roll of the Colliery either on the date of take over of the management or on the date of nationalisation of the said Colliery. The concerned workmen were neither appointed as probationer to fill up any substantive posts nor were they kept on the rolls of casual workers and so the management has no obligation to give them job whenever available. During the pre-nationalisation period of coking and non-coking coal mines, the wagon loading jobs used to be entrusted to the contractor who used to keep contract workers and deploy them on different dates depending upon placement of wagons at different sidings. This practice was adopted because of supply of wagons was erratic. For instance, on certain dates large number of wagons used to be placed on one siding of the Colliery whereas on other dates no wagons used to be placed on any siding of the colliery. In the circumstances, the collieries were not in a position to employ large number of wagon loaders on their rolls. After nationalisation of the coal mines it became possible to re-organise the mines after amalgamation and it became a practice to stop engagement of contractors on wagon loading jobs. There existed two groups of wagon loaders—permanent and casual. Subsequently a policy decision was taken to make casual wagon loaders permanent on the basis of number of attendance put by them. Those casual wagon loaders who put in 240 days of attendance in any calendar year were made permanent. In course of time majority of casual wagon loaders became permanent. During 1973-74 while the process of re-organisation continued some workers were employed wherever required as de-listed casual wagon loaders. They were not kept on the roll of casual wagon loaders and they were given jobs after providing jobs to casual wagon loaders. With the process of re-organisation such de-listed casual workers became redundant. The management took the decision in 1978-79 to employ de-listed casual wagon loaders of the colliery who had put in 75 days of attendance in any

calendar year from 1973 to 1975 as Badli miners/loaders to be employed during leave and sick vacancies. The requirement for such workers were left to the discretion of the General Manager of the respective areas. It is undesirable to keep large number of workmen on badli list and to provide them sufficient work for earning their livelihood. Since there was no requirement the management did not consider the claim of the concerned persons to be employed as de-listed casual wagon loaders.

4. In rejoinder to the written statement of the management, the sponsoring union has asserted that the concerned workmen had been working as permanent workmen since long and they were on the rolls of the colliery at the time of take over and nationalisation. The union has asserted that the claim of the management that prior to nationalisation of the coal mines, the wagon loading jobs used to be entrusted to the contractor is not true. It has been further asserted that the contractors were never engaged for wagon loading jobs. As per decision of the Central Consultative Committee the management of M/s. B.C.C. Ltd. had employed a large number of de-listed casual wagon loaders who had put in 75 days attendance in any calendar year from 1973-76. As a matter of fact the management has employed all the de-listed casual workers who had put in 75 days attendance in any calendar year during the 1973-76.

5. In rejoinder to the written statement of the sponsoring union, the management has stated that the statements made by the sponsoring union in its written statement with regard to the employment of the concerned persons in the colliery is false. The management has not denied its circular dated 5-12-80 and the note-sheet dated 13-12-80, but stated that true import of this circular and note-sheet will be urged at the time of hearing. Casual workers have no right to claim for employment and it is the option of the management to select badli workers as per need. The management has also denied other statements of the sponsoring union as disclosed in its written statement which impinge on its action.

6. The sponsoring union has examined one of the concerned workmen, namely, WW-1 Nahu Deshwali and laid in evidence a photostat copy of note-sheet dated 13-12-80. On the other hand, the management has examined Shri R. P. Debral, Dy. Personnel Manager (IR) in Govindpur Area as MW-1 and laid in evidence two items of documents which have been marked Exts. M-1 and M-2.

7. The case of the sponsoring union as disclosed in its written statement is that the concerned workmen had been working as permanent wagon loader of Govindpur Colliery and that at the time of emergency in the year 1975-76 the management stopped them from duty abruptly without conducting any enquiry and without assigning any reason and paying any retrenchment compensation. It is the further case of the sponsoring union that the concerned workmen and the union made a representation before the management, after the emergency was lifted, to allow them to resume duties atleast as badli miners/loaders in terms of the circular of the management bearing No. BCCL/PA-1/80/73795-835 dated 5-12-1980 and the Supdt./Agent of the Colliery moved a note-sheet dated 13-12-80 for allowing the concerned workmen to resume their duties and placed it for approval of the General Manager.

The case of the management is that during the period before nationalisation it was the practice to employ contractors for wagon loading jobs and that the contractors used to keep the contract workers for deployment to different collieries and that after nationalisation it was possible to stop engagement of contractor on wagon loading jobs and there existed two groups of wagon loaders—permanent and casual and consequent upon a policy decision to make casual wagon loaders permanent on the basis of attendance put by them, those casual wagon loaders who put in 240 days' attendance in any calendar year were made permanent. It is the further case of the management that policy decision was taken in 1978-79 to employ de-listed casual workers of the collieries who had put 75 days of attendance in any calendar year from 1973-76 as badli miners/loaders to be employed during leave and sick vacancies. The sponsoring union has disputed the position that the management of the collieries used to employ contractor's workmen on wagon loading job before nationalisation. However, the position is almost ad-

mitted that earlier there existed two groups of wagon loaders—permanent and casual and in the year 1978-79 the management resorted to employ all de-listed wagon loaders who put in 75 days attendance in any calendar year from 1973-76.

It is the case of the management that the concerned workmen were not on the roll of the Colliery at the time of nationalisation and they were neither appointed as probationer to fill up any substantive post nor were they kept on the rolls of casual workers of the Colliery.

It remains to be considered now if the concerned workmen were ever employed in the Colliery as wagon loaders.

8. MW-1 Nathu Deshwali is the sole witness of the sponsoring union. He has stated emphatically that he and the other workmen had been working in Govindpur Colliery from the time it was under the private management and that they were stopped from performance of duties during the time of emergency. He has further stated that they had put in 240 days of attendance in every calendar year and that will be borne out from the attendance register of the Colliery. The union called for the attendance register of the Colliery but the management could not produce it as it could not be found out and stated that under the provisions of Mines Rules attendance registers are required to be preserved for one year. In other words, the management could not produce the attendance register for 1973-74 and relied on technical ground for non-production of these documents. MW-1 R. P. Dabral, the sole witness for the management has not stated emphatically that the concerned workmen were never employed in the Colliery. All that he has stated is that their names do not find place in Form 'B' Register—Ext. M-1 series and that Bonus Register produced at the instance of the union marked Ext. M-2 bears the name of some of the concerned workmen, namely, Chunilal Rai at page 62, Shankar Rai at page 73, Jagdish Deshwali at page 64, Chetlal Chamar at page 75 and Gouria Deshwali at page 79. He has alleged that the name of Chunilal Rai has been inserted in the register after erasing out some name and that the name of Shankar Rai, Jagdish Deshwali, Chetlal Chamar, Gouria Deshwali have been inserted in place of Bangali Bhuia, Gosai Deshwali, Sona Bhuia and Kailash Bhuia respectively. I have examined the register Ext. M-2, but I am not satisfied that the name of Chunilal Rai has been inserted in the register by erasing out some other name. His father's name with home address and designation is very much there. Of course, the names of other workmen mentioned by him have been written in the register by deleting certain names. The Bonus Clerk who has written this register could have thrown some light in the matter. It appears from the testimony of MW-1 R. P. Dabral that Jai Karan Desai was the Bonus Clerk who wrote this Bonus Register but that he retired from service 5-6 years ago. Even then, the management could have summoned him to adduce evidence in this case especially when there is nothing on record to indicate that Jai Karan Desai is dead or his whereabouts are not known to the management. However, it has come to my notice by examining the register that there are also other names which have been written in the register by deleting certain other names. For instance, at page 65, 66, 67; and 70 the names of Dukho Rajwar, Raimohini Kamin, Shanti Kamin and Sume Kamin have been written by deleting certain other names. So, this register cannot be disbelieved simply because of the fact that the names of some of the concerned workmen have been written there by deleting certain other names.

9. Shri B. Joshi, learned Advocate for the management has submitted that some of the concerned workmen managed to include their names in the Bonus Register by manipulation on tampering with the record. Shri D. Mukherjee authorised representative of the sponsoring union has countered the allegation of tampering by submitting that there was no pleading that the names of the concerned workmen were brought on record by manipulation or tampering and that there is no pleading that thumb impression of some of the concerned workmen as appearing in the record are not those of the concerned workmen.

10. In order to prove manipulation or tampering with the record it is the bounden duty of the management to prove (i) that the record was accessible to the concerned workmen or their union for manipulation or tampering either by them-

selves or through their agent, and (ii) that actually the tampering or manipulation was done by the concerned workmen themselves or their agent. There is no vestige of evidence on this score. That apart, there is no pleading of the management that the record was manipulated or tampered with or thumb impressions as appearing on the record are not the thumb impressions of the concerned workmen. That being so, I am constrained to hold that the Bonus Register (Ext. M-2) as produced by the management is a piece of document which can be relied upon.

11. As I have stated above, that the names of some of the concerned workmen, namely (i) Chunilal Roy, (ii) Shankar Roy, (iii) Jagdish Deshwali, (iv) Chetlal Chamar and (v) Gouria Deshwali have found place in the Bonus Register as wagon loaders. So, there can be no escape from the position that these persons were employed in Govindpur Colliery as wagon loaders.

12. It has already been pointed out before that according to the management there existed two groups of wagon loaders in the Colliery—permanent and casual and that in the year 1978-79 the management decided to employ de-listed casual workers in the Colliery who have put in 75 days of attendance in any calendar year from 1973-76 as badli miner/loaders. The sponsoring union has cited the circular of the management and stated emphatically that the Supdt./Agent of the Colliery moved a note-sheet dated 13-12-80 for allowing the concerned workmen to resume their duties and placed it for approval of the General Manager. The management did not deny the existence of such note-sheet. As a matter of fact the management has taken the position that true import of the note-sheet will be urged at the time of hearing. The record bears out that the sponsoring union submitted a petition dated 16-12-83 for production of this note-sheet. The management was directed by order dated 16-12-83 (84 ?) to produce this document. But that was never produced by the management. A Photo copy of this notesheet has been produced by the sponsoring union and has been marked X for identification. When confronted with this notesheet MW-1 R. P. Dabral could not deny the authenticity of the notesheet but simply stated that he does not know the signature of the Agent as appearing in the photo copy of the note-sheet dated 13-12-80. It appears from this note-sheet that the name of all the concerned workmen have been mentioned there as de-listed male casuals who put in 75 days or more attendance during the period 1973-76 and the Agent solicited permission to deploy them as badli wagon loaders. Sri Dabral has admitted in cross-examination that he is aware that in 1980 the Director of Personnel of M/s. B.C.C. Ltd. issued circular for taking in employment de-listed casual workers who had put in 75 days of attendance during 1973-76 and that 30 to 40 de-listed casual workers were given employment in Govindpur Area. This being the position, I have no hesitation to hold that all the concerned workmen were de-listed casual workmen of Govindpur Colliery and in terms of the circular of the management they are entitled to be re-employed at least as badli miners/loaders. Hence, the demand of the workmen of Govindpur Area No. III of M/s. B.C.C. Ltd. for employment of the concerned workmen is justified.

13. Accordingly, the following award is rendered—the demand of the workmen of Govindpur Area No. III of M/s. Bharat Coking Coal Limited, Post Office Sonardih, District Dhanbad, for employment of S/Shri Nathu Deshwali, Gouria Deshwali, Chetlal Chamar, Shankar Roy, Sukhlal Deshwali, Chunilal Roy and Lakhan Bhuia is justified. The management is directed to appoint the concerned workmen as badli wagon loaders of the Colliery and to give them employment in term of its circular.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer
[No. L-20012(211)/82-D.III (A)/TR (Coal-I)]

का. आ. 1047 :—औद्योगिक विकास अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वये में, केन्द्रीय सरकार, मैसूर भारत कोकिंग कोल लि. की केन्द्रीय इकाई कोलियरी के प्रबन्धन से सम्बन्धित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विकास में केन्द्रीय सरकार, औद्योगिक अधिनियम, (अ. 2), धनदा के पंखाट को प्रकाशित करती है।

S.O.1047.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Kendwadih Colliery of M/s. Bharat Cooking Coal Ltd. and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 312 of 1986

In the matter of an industrial dispute under Section 10(1)(c) of the I.D. Act, 1947.

PARTIES :

Employers in relation to the management of Kendwadih Colliery of Messrs. Bharat Coking Coal Limited and their workmen.

APPEARANCES :

On behalf of the workmen.—Shri S. S. Bhattacharjee Advocate and Shri S. N. Goswami, Advocate.

On behalf of the employers.—Shri G. Prasad, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad, the 2nd March, 1990

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/163,86-II(A), dated, the 28th August, 1986.

SCHEDULE

"Whether the demand of Bihar Mines Lal Jhanda Mazdoor Union that the management of Kendwadih Colliery of Messrs. Bharat Coking Coal Limited should departmentalise the workmen, whose names are given below, with payment of wages to them under the National Coal Wage Agreement-III with retrospective effect, is justified? If so, to what relief are these workmen entitled?"

1. Shri Ram Iqbal Yadav
2. „ Chandradeo Ram
3. „ Munatik Ram
4. „ Umesh Ram
5. „ Rajdeo Prasad
6. „ Avdesh Pradesh
7. „ Shiv Prasad Yadav
8. „ Tapeshwar Ram
9. „ Marachu Ram
10. „ Ram Bachhan Ram
11. „ Baldeo Singh
12. Smt. Chandrika Kamin
13. Shri Rumbali Ram
14. „ Dev Nath Prasad
15. „ Ram Avash Ram.

The case of the workmen is that the 15 concerned workmen were cooperative mazdoors who were engaged to perform their duties in Kendwadih colliery of Area No. VII of M/s. B.C.C.L. Since their engagement they were discharging the jobs under the direct control and supervision of the colliery management. They were engaged in the perennial nature of job such as stone cutting, coal cutting, lime packing, stoppage and stowing, pump operating and explosive carrier in the underground and on the surface. The Central Govt. have directed the management not to allow any person to perform the jobs of permanent and perennial nature through any contractor. As such it is clear that the concerned workmen are not contractor labour although they were cooperative mazdoors and they will be deemed to be the workmen of the colliery. The concerned workmen therefore demanded for their regularisation. Some other workmen of the cooperative Mazdoor who were doing similar jobs were regularised after an Award was passed in Ref. No. 16/83 and they were put in Category-I. The concerned workmen and the union made several representations before the management for regularisation of the concerned workmen but the management did not pay any heed. Thereafter an industrial dispute was raised by their union, namely Bihar Mines Lal Jhanda Mazdoor Union before the ALC(C), Dhanbad. The ALC(C) started conciliation proceeding which ended in failure and thereafter the present reference was made to this Tribunal for adjudication. There is relationship of employer and employee between the management and the concerned workmen. As the concerned workmen were the workmen of the colliery they were provided with safety devices namely Cap-lamp, helmet, boot etc. They were also provided with coal for domestic purpose and quarters for their accommodation. The management were maintaining registers and cap lamp issue register and the attendance of the concerned workmen were marked therein. The job of the concerned workmen were directly controlled and supervised by the management. For the above reasons the concerned workmen are legally entitled to the benefits of departmentalisation with payment of wages to them under NCWA-II and III with retrospective effect and the services of the concerned workmen cannot be terminated. On the above facts it is prayed that the management be directed to departmentalise the concerned workmen and be placed in their proper grade according to the job being performed by them.

The case of the management is that the concerned persons, who are contractors workmen formed a distinct class and there is no community of interest between these persons and the direct employees of the principal employer. The concerned persons are not the employees of the colliery and there is no relationship of employer and employees between the management and the concerned workmen. The employers of Kendwadih colliery is the principal employer in relation to the concerned persons and since after coming into force of the contract labour (regulation and abolition) Act, 1970 the Tribunal has ceased to have jurisdiction to consider such matters as has been specified in the order of reference and to direct the principal employer to prohibit contract labour and departmentalise the concerned persons which is now completely vested in the appropriate Govt. under Section 10 of the Contract Labour Act, 1970. Every dispute relating to contract labour has to be tackled only under the provisions of the Contract Labour Act and not under the Industrial Dispute Act. It will appear from the schedule of the reference that the concerned persons were not working as departmental workmen and hence their demand for departmentalisation is not justified. The concerned persons were employed by the contractors in misc. and casual nature of jobs which have not been prohibited under the Contract Labour Act, 1970. The concerned persons who were employed as casual workmen by the contractors, who was himself allotted casual nature of contract job, have no right to claim employment under the management. The concerned persons were employed by contractors in intermittent and temporary nature of work which was for a short duration and as such it is not possible to employee whole time workmen for that purpose by the management. Under Section 21 of the contract labour Act, 1970 the contractor is responsible for the payment of wages to the workers

employed by him and on his failure to make the payment within the prescribed period the same has to be paid by the principal employer who can recover the same from the contractor. The concerned persons were paid their wages by the contractors had their work was also supervised by the contractor and not by the management. The fact that the names of the concerned persons were entered in C-Form register or the Cap Lamp Register will not make the concerned persons employees of the principal employer. It is statutory obligation of the employer to enter the names of the persons who go underground in Form C register and the names of the persons supplied with Cap Lamp for going underground is mentioned in the Cap Lamp Register. Such entries are made in respect of all the persons going underground and there is no exception whether he is a workman or not. The concerned persons were not doing the same and similar work as are being performed by the direct employees of the principal employer. On the above facts it is prayed on behalf of the management that the Award be made in favour of the management and the demand of the workman be rejected.

The points for determination are whether :—

- (1) There is any relationship of employer and employee between the management and the concerned persons ?
- (2) whether the concerned persons could be departmentalised and
- (3) whether they are entitled to payment of wages under NCWA III with retrospective effect.

The workmen and the management each examined 3 witnesses in support of their case. The documents of the workmen have been marked as Ext. W-1 to W-3 and the documents of the management have been marked M-1 to M-3/4.

Point No. 1

MW-1 Shri Mihir Kumar Roy was working as Survey Officer from 1560 to 15th January, 1989 in Kendwadiah Colliery of M/s. BCCL. He has stated that the Chandradeo Ram (concerned workman at Sl. No. 2 of the order of reference) was the contractor during his period of posting in Kendwadiah colliery. He has proved the work order Ext. M-2 to M-2/4 prepared in the name of Chandradeo Ram during the years 1984-85. Ext. M-3 to M-3/4 are the corresponding contractors bills in respect of the work orders Ext. M-2 to M-2/4. Ext. M-2 series bear the signature of Shri Chandradeo Ram showing acceptance of the terms and conditions stated in the work order. Ext. M-3 series also bears the signature of Chandradeo Ram as contractor. MW-1 has stated that the Mazdoor working in the contract work of Chandradeo Ram were the workmen of the contractor Chandradeo Ram and not the workmen of the colliery. The management has picked up only 5 work orders Ext. M-2 series and its corresponding bills Ext. M-3 series and has not produced other work orders or bills prepared in the name of Chandradeo Ram. In cross-examination MW-1 has stated that the entry of the Cap Lamp issued to the persons is made in the Cap Lamp Register and that the persons going in the underground mine are shown in the Attendance Register Form C. According to him the register Form-C will show the number of days worked by the concerned workmen in the underground. He has further stated that he cannot say if the work orders Ext. M-2 series are the only work orders in the name of contractor Chandradeo Ram or there are other work orders issued to him. He also does not know if there was any agreement regarding the contract work between the management and the contractor Chandradeo Ram. MW-2 Sunil Kumar Roy was working as Manager in Kendwadiah colliery from February, 1983 to December, 1987. He has stated that Chandradeo Ram was a contractor in Kendwadiah colliery and work order was being issued in his name as contractor. Ext. M-2 series and Ext. M-3 series bear his signature except in Ext. M-2/4. He has stated that the work done in work order

Ext. M-2 was Fire Protection work and that the work shown in Ext. M-2/2 is of Civil Engineering but was done in respect of Fire protection. Both MW-1 and MW-2 have stated that the contractor used to pay the wages to his workmen and that the management did not pay the wages directly to the workmen of the contractor. MW-2 has also stated that the workmen of the contractor did not work regularly in Kendwadiah colliery and the contractor used to work according to his work order given by the management. He has also stated that all the persons who go underground are recorded in Form C register and whenever the concerned workmen went underground their names were recorded in Form C Register. He has accepted that the workmen of the contractor used to be treated in the colliery dispensary and hospital. In spite of the fact that the concerned workmen were treated in the hospital and dispensary of the colliery the workmen have filed prescriptions Ext. W-6 series. MW-2 has stated that the Stores articles are supplied only on the basis of requisition and the original requisition is kept in the stores after the issuance of the materials and its duplicate is given back to the person who comes with the requisition. He also accepted that some of the requisitions Ext. W-5 series contain the signature of the Manager of the colliery. He has further stated that Ext. W-5/2, Ext. W-5/6, Ext. W-5/7 and Ext. W-5/10 contain his signature. Thus it is clear from his evidence that atleast some of the requisitions in Ext. W-5 series were issued by the authorities of the colliery in the name of Chandradeo Ram. In cross-examination MW-2 has stated that Fire Protection work is done under the direction of the colliery Manager and Safety Officer. According to the earlier statement of MW-2 it will appear that some of the work done by the contractor Chandradeo Ram and his men were Fire Protection work. Thus the work of Fire Protection being done by Chandradeo Ram and the concerned workmen was done under the direction of the Colliery Manager and Safety Officer. Thus it is obvious that the concerned workmen were performing the work under the direct supervision of the authorities of the collieries.

MW-2 in his cross-examination has stated that the job of Stone cutting, Coal cutting, Lime packing, stopping, and stowing, pumps, operating, explosive carrying and blasting are planned job. WW-1 Bipan Prasad, WW-2 Ram Bali Ram, WW-3 Awadesh Prasad have all stated that they along with other concerned workmen were working in Kendwadiah colliery as general Mazdoor from 1982 to 1985 and were doing the work of Lime Packing rail carrying Tyndal and driller in the underground and that job being performed by them was of permanent nature. WW-1 has stated that when he used to go to work underground his attendance was noted in Form C and Cap-Lamp used to be issued in his name and they also used to get medical facilities in the colliery hospital. In cross-examination he had to accept that the concerned workmen were working under the Dangal of Chandradeo Ram and that Chandradeo Ram was in the Dangal of Cooperative society. He has also mentioned about one Dangal of one cooperation in the name of Shri Sitaram. WW-2 has stated that they were doing the job under the direction of the Engineer and Foreman. He has stated that they were cooperative workers and that some other cooperative workers along with them had been regularised on the basis of the Award passed by the Tribunal and some of them have also been regularised on the basis of settlement between the parties. He has referred to the Award passed by the Tribunal in Ref. 18/83 dated 16.11.84 which is Ext. M-7 in this case. In cross-examination WW-2 has stated that there were dangals of Sarda Paul, Ram Charitar, Sitaram, Mukhlram and Payari Singh of the cooperative in which they were working WW-3 has stated that the Manager, Agent, Foreman Incharge, Mining Sirdar used to supervise their work and their attendance was marked and Cap Lamp was issued to them. He has further stated that the persons of other gang have been regularised by the management after the award in Ref. No. 16/83 and as such they are also demanding for their regularisation. The job description of the Stone cutters as given in Central Coal Wage Board Recommendation Vol. II, at page 47 Sl. No. 12 shows that "A workman generally employed in cutting drains in floor strata, making water sumps, driving stone drifts, making short holes in stone in preparation for blasting etc." are the jobs of Stone cutters. Ext. W-4 dated 1-3-84 is a slip to engage 2 persons of

Chandradeo for making whole in 3rd shift. Ext. M-2/1 will show that the gang of Chandradeo Ram were engaged in earth cutting and filling cracks, Ext. M-2/2 will show besides other work that the gang of Chandradeo Ram were engaged to work for cutting the coal floor in a stone cement cutting in floor. Ext. M-2/3 will show that track packing and re-packing with surface materials, dismantling track, carrying and laying track within the mine and track fitting or the sump were also done by the gang of Chandradeo Ram. The contractors bill Ext. M-3 series will show that the wages of the work done vide work order Ext. M-2 series were paid to Chandradeo vide Ext. M-3 series. It is thus clear that the concerned workman were engaged in the job of stone cutting as per job description of the stone cutters given in the Central Coal Wage Board recommendation stated above. A notification No. S.O. 488 dated 1-2-75 issued by the Central Government in exercise of the powers conferred by Section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 prohibits employment of contract labour in the works amongst others driving of stone drifts and misc. stone cutting underground. If the concerned workmen had been contractors labourers they would not have been assigned with the job of Stone cutting and driving of the stone drifts and misc. stone cutting underground as is shown to have been performed by the concerned workmen vide Ext. M-2 series. It is also obvious that the management has picked up only a few work orders which were issued in the name of Chandradeo Ram and there is no evidence of the management to show that the gang of Chandradeo Ram were only engaged to do the work as shown in the five work orders Ext. M-2 series. The management has not filed Form C Register which would have shown the names of the concerned persons date, and shifts in which they had gone underground to work in the Colliery. The management has also not filed Cap Lamp Issue Register to show the names of the concerned workmen date and their shift in which cap lamp was issued to them to go underground for work. MW-1 has not denied that Form C register are not available in the office of Kendwadih Colliery. Those documents were in the possession of the management and it was for them to show that the concerned workmen had worked intermittently for a few days in the Colliery but there is no evidence to that effect.

The workmen have also exhibited some slips to show that the gang of Chandradeo Ram were allowed to work in the underground. Ext. W-2/2 further shows the names of 13 concerned workmen who were asked to be allowed in No. 1 Pit in the first shift. Thus it will appear that even the names of the concerned workmen are supported by the documents of the management. Ext. W-2/2 shows that Chandradeo Ram and 14 others were asked to be allowed to work in the first shift of No. 1 Pit. Ext. W-3 also shows that Chandradeo Ram and his gang of 14 heads were asked to be allowed to work in the first shift. It will thus be clear that the concerned workmen were working underground in Kendwadih Colliery Ext. W-5/1, W-5/2, W-5/4, W-5/6, W-5/7 W-5/10 are the Colliery requisition slips issued to Chandradeo Ram showing that he was given requisition slip for the articles for working in the Colliery. Thus it shows that the concerned workmen were working in the underground of Kendwadih Colliery and they were supplied with the working implements by the management for performance of the work entrusted to them. Admittedly, the management had not entered into contract with the concerned workmen or gang leader Chandradeo Ram. There is also no evidence to show that any tender was submitted by any of the concerned workman to do any contract job. It will also appear that even Chandradeo Ram who is alleged to be the contractor was just an ordinary workman doing the work like other concerned workmen. There is no evidence to show the manner in which Chandradeo Ram was supervising or controlling the work of the other concerned workman. It appears that the management had just contrived a device in the form of work order to over come the industrial law so that the management may not have to keep the concerned workmen on the roll of the company. On consideration of the entire evidence on record it will appear that the concerned workmen cannot be held to be contractors workers and as they were employed to do the work of stone cutting and other misc. job in the underground mine and on the surface were actually the workmen of the management of Kendwadih Colliery. I hold therefore that there was relationship

of employer and employee between the management and the concerned persons.

Point No. 2

The evidence as appears on record will show that the cutting workmen were regularly doing the work of stone cutting and other misc. jobs since 1982 to 1985. In Kendwadih Colliery and the fact of their working in Kendwadih Colliery has not been denied by the management. The management has not been able to show that the concerned workmen were not regularly working in the underground and also on the surface by producing the relevant records with them and as such I hold that the concerned workmen were continuously working for over 190 days in the underground or 240 days on the surface in a year since 1982. In view of the evidence discussed above I hold that the concerned workmen were actually the workmen of Kendwadih Colliery but the management had made a device to show that they were contractor workers and as such I do not find any obstacles in departmentalising the concerned persons. Point No. 2 is therefore decided in favour of the workmen.

Point No. 3

Admittedly, the concerned workmen are not working after September, 1985. The concerned workmen were getting their wages through their Dargal Sirdar Chandradeo Ram for all the work being performed by them. As they had not worked after September, 1985 it does not appear to be proper to order for payment of wages as the wages were being paid to them on the actual work performed by them. However, the question is whether the concerned workmen could be departmentalised and I think the said demand of the union is quite justified as they were actually engaged to do the work of Kendwadih Colliery under some device so that apparently they could not appear to be the departmental workmen of Kendwadih Colliery. I hold therefore that the concerned workmen are entitled to be departmentalised from August, 1986, the date when the reference was made to this Court. But the concerned workmen will not be entitled to the wages for the period they have not worked.

In the result I hold that the demand of Bihar Mines Laljhanda Mazdoor Union that the management of Kendwadih Colliery of M/s. BCCIL should departmentalise the 15 concerned workmen is justified. But their demand for payment of wages to them with retrospective effect does not appear to be justified. The management is directed to departmentalise the 15 concerned workmen in Kendwadih Colliery of Area No. VII as Misc. Mazdoor in Cat. I as indicated above within one month from the date of publication of the Award failing which the management will have to pay the wages of Cat. I after one month of the publication of the Award pending implementation.

This is my Award.

I. N. SINHA, Presiding Officer

[No. I-20012(163)/86-D.III (A)/IR (Coal-I)]

नई दिल्ली, 28 मार्च, 1990

का. आ. 1048--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार, इससे भारत कोकिंग कोयला लि. का क्षेत्र में, 4 की कतरास चोखुडी कोखिरी के प्रबंधक से सम्बन्धित नियोजकों और उनके कर्मचारों के बीच, धनबन्ध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (नं. 2), धनबाद के पंचपट को प्रकाशित करती है।

New Delhi, the 28th March, 1990

S.O. 1048.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Katras Chaitudih Colliery in Area No. IV of M/s. Bharat Coking Coal Ltd. and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 22 of 1986

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act., 1947.

PARTIES :

Employers in relation to the management of Katras Choitudih Colliery in Area No. IV of M/s. Bharat Coking Coal Limited and their workmen.

APPEARANCES :

On behalf of the workmen—Shri B. K. Ghose, Member, Executive Committee Janta Mazdoor Sangh.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal

Dated, Dhanbad, the 6th March, 1990

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012-(126)/85-D.III(A), dated, the 3rd January, 1986.

SCHEDULE

"Whether the demand of Janta Mazdoor Sangh that the management of Katras Choitudih Colliery in Area No. IV of M/s. Bharat Coking Coal Limited should give protection of wages to their workmen, mentioned in the Annexure below, on their conversion from piece-rated to time-rated jobs is justified? If so, to what relief are these workmen entitled?"

1. Shri Mansaukhi Dusadh.
2. „ Kuldeep Dusadh.
3. „ Raghunandan Dusadh.
4. „ Ganauri Dusadh.
5. „ Ramlogan Dusadh.
6. „ Sitaram Dusadh.
7. „ Badu Dusadh.
8. „ Shri Mangal Dusadh.
9. „ Suresh Mahato.
10. „ Hambaran Mahato.
11. „ Khalil Mia.
12. „ Salamat Mia.
13. „ Ramswarup Dusadh.

The case of the workmen is that the concerned 13 workmen were formerly working in different permanent piece-rated jobs. They were asked by the management to work in different time rated/monthly rated jobs. The management started paying them initial basic wage of Cat. I scale from the date of their employment in the time rated jobs without protection of their piece rate wages inspite of the protest made by the concerned workmen. The concerned workmen were formerly regularised in the time rated jobs from 19-7-80 and were arbitrarily placed at the initial basic pay of the respective scales without considering the protection of the piece rate wages which they had been getting before joining the time rated jobs. The management denied to protect their piece rated wages on the ground that the concerned workmen were given new posts as light jobs on compassionate ground on their own request which was not correct. The denial by the management to protect the wages of the concerned workmen and fixation at the initial basic of the respective new

scales from 19-7-80 was illegal and unjustified. The demand of the workmen for protection of wages of the concerned workmen from the dates they joined the new time rated jobs and also for fixation in the new scales with protection of wages from 19-7-80, is justified. Accordingly it has been prayed that an Award be passed in favour of the workmen holding that their demand for protection of wages is justified and their scale of pay be accordingly fixed with payment of difference from 19-7-80.

The case of the management is that the concerned workmen were piece rated workers and were given light duties on account of medical ground and general weakness of health. The concerned workmen mentioned at Sl. No. 1 and 5 of the schedule of reference were given light duties on account of heart disease whereas Sl. Nos. 2, 5, 7, 9 and 11 were given light duties after accidents and others were given light duties on account of lungs disease or general weakness against permanent vacancies. As the concerned workmen became unsuitable to perform their original piece rated duties on account of medical ground they were given light duties at their own prayers and at the request of the union and subsequently were regularised on the light nature of jobs according to the suitability and availability of vacancies of different jobs. The concerned workmen as well as the union accepted the principles of regularisation and for several years they never claimed for their original jobs or protection of wages. The minutes of discussion of the Area consultative committee was widely circulated in the year 1982. Some union activist having rivalry with the members of the representative of the union in the Area consultative committee started some vilifying activists. A dispute on the self some issue was raised in the year 1983 by the union and the same was withdrawn. The present dispute has been raked up again with some ulterior motive. It is not a fact that the management asked the concerned workmen to work on the time rated jobs from piece rated jobs. The concerned workmen were paid the appropriate category wages according to the nature of jobs performed by them with their full consent. They did not protest it. The principles of regularisation have been accepted by almost all the trade unions and the workmen. The union regularly demand for regularisation of work of higher groups/categories in lower groups/categories on medical ground or otherwise and sometimes the joint consultative committee consisting of representatives of the management and the unions have regularly endorsed the principles of regularisation stated above. On the above facts it has been submitted that an Award be passed holding that the concerned workmen are not entitled to any relief.

The only point for decision in this case is whether the concerned workmen should be given protection of wages on their conversion from piece rated to time rated jobs.

The workmen examined 2 witnesses and the management examined one witness in support of their respective case. The documents of the management are marked Ext. M-1 to M-11. No document has been marked on behalf of the workmen.

It is the admitted case of the parties that formerly the concerned workmen were in piece rated jobs who were converted to time rated jobs and were finally regularised in the time rated jobs from 19-7-80. It will appear from the evidence of WW-1 and W-2 who are 2 of the concerned workmen in the case that all the 13 concerned workmen were given time rated jobs as Night Guard which is a time rated job. WW-1 has stated that he was appointed as a Miner/loader in 1956 in Katras Choitudih colliery and in 1978 he was given time rated job as Night Guard. He has stated that as piece rated workman he was getting 18.45 paise per day and that the wage of time rated cat. I job in which he was posted was much less than the wages he was getting in the piece rated job of Miner/loader. He has stated that he had not agreed in writing to the management that he was ready to work in the time rated job on wage lower than the piece rated wages and had demanded for the protection of his piece rated wages. He has further stated that there were other piece rated workmen who were given time rate job and their wages were reduced in the time rated jobs. He has accepted that all the concerned workmen demanded from the

management for the protection of their wages and there was a meeting between the management and the representatives of the different union in connection with the same. Thus he refers to the meeting of the Area consultative committee Ext. M-1 which I shall discuss afterwards. He has accepted that he is getting the proper wages of Night Guard and that all the concerned workmen who are working Night Guards are in the same grade. He has stated that he has no paper to show as to how the concerned workmen were taken in the time rated jobs on request on medical ground and the evidence of WW-1 supports a part of the said contention of the management. WW-1 has stated that the concerned workmen Bardu Dusadh, Mansokhi Dusadh and Khalil Mia had received injuries when they were working as Miner/loader but he has denied that they had requested the management for providing them time rated jobs. It was suggested to WW-1 that they were regularised in accordance with the decision between the management and the union in 1981 and were paid the wages of the particular jobs in which they were placed as per the terms of the agreement Ext. M-1, WW-2 has stated that he does not know about the decision of 1981 between the management and the union representative. In cross-examination WW-2 has stated that due to wound he became sick and the doctor advised him to work on some light job for a few months and thereafter he applied to the management for giving him light job. He has accepted that he did not protest before the management when he was getting less wages in the time rated jobs. He has also stated that he did not apply to the management to be placed in his original piece rated job when the management decided to give him less wages in the time rated jobs. He has further stated that the other concerned workman also did not apply to the management as they are getting less wages in the time rated jobs and they should be put back in their original piece rated jobs so that they may get higher wages. He has stated that for the first time the concerned workman applied when the present demand was raised and not before that. He has expressed his ignorance if their wages was fixed as per settlement arrived at between the management and the representatives of the union in 1981. Thus the 2 witnesses for the workmen have just expressed their ignorance about the fact that the wages of the concerned workmen was fixed as per settlement arrived at between the management and the representatives of the union in 1981.

Now let us turn to the evidence of MW-1 who was working in Katras Choitudih colliery as Manager under whom the concerned workmen were working. MW-1 has stated that a meeting of the Area consultative committee was held for deciding fixation of Category at the time of change of their piece rate to time rate jobs and Ext. M-1 is the minutes of the said consultative committee. He has stated that the decision of the said committee was conveyed to him and he was asked to submit the list of piece rated workers working in the time rated jobs who wanted to be converted in the time rated jobs. After the receipt of the said order he submitted a list of such workers fixing the category of the workmen. Accordingly office order Ext. M-10 was issued and on the basis of Ext. M-10 the basic wages of the workman were fixed. Ext. M-10 is the office order dated 19-11-82 containing the name of 103 workmen including 8 of the concerned workmen (namely at Sl. No. 85 to 88, 103 to 106 of Ext. M-10). In cross-examination MW-1 has admitted that from 1979 time rated designation was given to the workmen who were originally in the piece rated but were working in the time rated jobs. He has stated that at that time the management did not consider the basic wages of the piece rated when they were designated in the time rated jobs. It will appear from his evidence that the concerned workmen and others were only pressing for their regularisation in the time rated designation and hence the meeting of the consultative committee was held and as such the protection of the wages of the piece rated was not considered in 1979 when they were designated in the time rated jobs.

It will appear from the evidence of MW-1 that the wages of the concerned workmen were fixed in accordance with the decision arrived at in the area consultative committee held in 1981. Ext. M-1 is the minutes of discussion of the Area consultative committee dated 19-12-81 consisting of the management and the different unions. Para-3 of Ext. M-1

deals with the "fixation" of the basic wages of the workmen who were working in the time rated jobs and were originally working in piece rated jobs. It further shows that on 23-12-81 meeting of the consultative committee was again held and the norms for fixation of the basic wages of the workmen working on time rated jobs was decided. The decision of the said consultative committee is constituted in sub-para-1 and 2 of paragraph-3. It further appears that only one of the representative of the union Shri Basishth Narain Singh, Area Secretary of R.C.M.S. was not agreeing to the decision and as such the management was given full power to give its own decision. Ext. M-9 dated 12-11-82 contain the list of the workmen which shows that the General Manager Katras Area agreed to approve the revised basic pay of the workmen as per decision of the Area consultative committee and the Agent of Katras Choitudih colliery was requested to implement the revised basic in the year 1982 without arrear wages arising out thereof as per decision of the Area consultative committee. Thus it is clear that the management has fixed basic wages of the concerned workmen on the basis of the decision of the Area consultative committee and the said decision now cannot be challenged when the concerned workmen had already accepted the basic wages fixed by the management without any evidence to show that they had protested against the said fixation.

Ext. M-2 is an application by the concerned workman Sitaram Dusadh praying for time rated job on the ground that he was suffering from Asthma and was asked by the doctor to do light job. There is a note in Ext. M-2 to show that he was allowed light duty for few weeks. Ext. M-3 dated 30-10-77 is an application by the concerned workman Shri Mansukhi Dusadh stating that he was operated upon his leg due to which both his legs were very weak and was unable to do the piece rated job and prayed for light job. There is a note on Ext. M-3 to show that as suggested by Loyabad Central Hospital Mansukhi Dusadh was unfit for underground work and may resume surface duty. Ext. M-4 dated 4-9-78 is an order of the Supdt. Katras Choitudih colliery to the concerned workman Khalil Mia by which he was allowed to work on light duty as guard with effect from 14-9-78 for a few weeks. Ext. M-5 dated 21-2-79 is an order of the Supdt. by which Sitaram Dusadh was allowed to work on Night duty with effect from 22-2-79 for 15 days Ext. M-6 dated 11-6-79 is the further order of the Supdt. by which the concerned workman Sitaram Dusadh was further allowed to work on light duty from 11-6-79 for 6 weeks Ext. M-7 dated 26-3-79 is the office order showing that Sitaram Dusadh, Rajaram Dusadh and Ganori Dusadh were allowed light duty with effect from 26-3-79 for about a week. Ext. M-8 dated 8-10-77 is order of the Supdt. Katras Choitudih colliery to the concerned workman Kuldip Dusadh directing him to report for duty to his original job from 10-10-77 as the management cannot afford to allow him light job for indefinite period. Ext. M-11 dated 1-7-80 is the note sheet of the Addl. Manager recommending S/Shri Khalil Mia, Surith Mahato, Kuldip Dusadh, Ram Lagan Dusadh, Barhu Dusadh, Mansokhi Dusadh, Ganori Dusadh, Mangal Dusadh, Muneshwar Dusadh, Ramsarup Dusadh, Rambaran Mahato and Sitaram Dusadh for their employment on time rated jobs on surface and it was referred for consideration at the area level. Ext. M-11 further shows that the concerned workmen Khalil Mia, Surtih Mahato, Kuldip Dusadh, Ram Lagan Dusadh and Barhu Dusadh had met with accident in the mine and had applied for light duties. It shows that the concerned workmen Mansokhi Dusadh, Ganori Dusadh, Mangal Dusadh, Ram Sarup Dusadh, Ram Baran Mahato and Sitaram Dusadh had also applied for light duty as they were suffering from heart disease, T.B. Bronchitis and they are all finding difficulty to work inside the mine and had requested for giving them light duty on the surface. This notesheet is of the year 1980 when there was no knowledge about the raising the present dispute and the notesheet was floated in the regular course of the administrative duties and as such their appears to be no reason to disbelieve the notesheet Ext. M-11. It appears therefore that most of the concerned workmen had requested for giving them duty on the surface as they were finding difficulties to work in the underground mine. On the consideration of the evidence it appears that the concerned workmen themselves had applied for being converted from piece rated jobs to time rated jobs and not that they have been brought

to the time rated jobs at the instance of the management. Piece rated workmen working in the Coal mines generally prefer to be in the time rated jobs as their wages is almost assured but the same is not the case in respect of the piece rated workmen. If the piece rated workmen do not keep good health it is difficult to earn even the minimum wages of the piece rated and when they do not work, they do not get any wages. Thus the workmen prefer to be in the time rated jobs for which they are ready to forgo the piece rated scale of wages. It appears that the concerned workmen had themselves applied for time rated jobs on the ground of their health and the management had accepted their request and regularised them to the time rated jobs after they worked for sometime in the time rated jobs. It appears that it was for this reason that the concerned workmen or their union did not raise any objection when the category of the scale of pay of the concerned workmen was fixed in the time rated jobs in which they were working. It will also appear from the notes of the meeting of the consultative committee that the union were not demanding for the protection of the piece rated wages of the workmen who were formerly working in the piece rated jobs and were put to time rated jobs on their request. In my opinion it is now too late to raise the question of protection of piece rated wages after such a long period.

In view of the discussions made above I hold that the concerned workmen are not entitled to the protection of their piece rated wages on their conversion from piece rated to time rated jobs.

In the result, it is held that the demand of the Janta Mazdoor Sangh that the management of Katras Choitudih Colliery, Area No. IV of M/s. BCCL should give protection of wages to their 13 concerned workmen on their conversion from piece rated to time rated jobs is not justified and consequently the concerned workmen are entitled to no relief.

This is my Award.

Sd/-

I. N. SINHA, Presiding Officer
[No. L-20012(126)/85D.III(A)/IR (Coal-I)]

नई दिल्ली, 6 अप्रैल, 1990

क्र. प्र. 1049 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैनस हडियन प्रायत एण्ड स्टील को. लि. की जीतपुर कोलियरी के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अन्तर्गत में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, (सं. 2) धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-3-1990 को प्राप्त हुआ था।

New Delhi, the 6th April, 1990

S.O. 1049.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, (No. 2), Dhanbad as shown in the Annexure in the industrial disputes between the employers in relation to the management of Jitpur Colliery of M/s. Indian Iron and Steel Company Ltd. and their workmen, which was received by the Central Government on the 27th March, 1990.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 261 of 1986

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947

PARTIES :

Employers in relation to the management of Jitpur Colliery of M/s. Indian Iron and Steel Company Limited and their workmen.

APPEARANCES :

On behalf of the workmen—Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

On behalf of the employers—Shri R. S. Murthy, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dhanbad, the 15th March, 1990

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012 (96)/86-D.III(A), dated the 22nd July, 1986.

SCHEDULE

"Whether the demand of Bihar Colliery Kamgar Union that the management of Jitpur Colliery of M/s. Indian Iron & Steel Co. Limited should place in Category-V the workmen of the said colliery engaged in Long Wall Mining is justified? If so, to what relief are these workmen entitled?"

Both the parties had filed their respective written statement. The case was thereafter fixed for hearing but as the parties were making efforts to settle the dispute outside the Tribunal, they were asking for adjournment on several dates. Finally a Joint Petition was filed by the parties along with the Memorandum of settlement containing the terms of settlement before this Tribunal on 2-3-90. It is stated in the petition that the parties have resolved the dispute after prolonged discussion and it has been settled by a tripartite agreement signed before the Asstt. Labour Commissioner (Central), Dhanbad on 11-9-89 and the settlement has been implemented. It is further stated that there does not exist any dispute/demand of the workmen/union connected in this matter and the same has been fully and finally settled. It is prayed that an Award be passed in terms of the settlement arrived at between the parties which are attached with petition.

Heard both the parties on the matter of settlement and I do find that the terms of settlement are fair, proper and beneficial to both the parties. Accordingly I accept the same and pass an Award in terms of the settlement arrived at between the parties and let the petition and the memorandum of settlement form part of the Award as Annexure.

I. N. SINHA, Presiding Officer
[No. 20012(96)/86-D.III(A)/IR (Coal-I)]

BEFORE THE PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL NO. 2, DHANBAD

Reference No. 261/86

PARTIES :

Employers in relation to the management of Noonodih/Jitpur Colliery of M/s. IISCO Ltd., P.O. Jitpur, Dist. Dhanbad.

AND

Its Workmen

Compromise Petition by Employer and their Workmen/Union

The above named parties most humbly beg to submit before the Hon'ble Tribunal as follows :

1. That the Ministry of Labour, Govt. of India vide O.M. No. L-20012(96)/D-III.A dated 22-7-1986 has referred the following dispute for adjudication before this Hon'ble Tribunal.

"Whether the demand of the Bihar Colliery Kamgar Union that the management of Jitpur Colliery of M/s. IISCO Ltd. should place in Cat. V the workmen of the said colliery engaged in Longwall Mining is justified? If so, to what relief these workmen are entitled?"

2. That the parties have resolved the dispute after prolonged discussions and it has been settled by a tri-partite agreement signed before the Asstt. Labour Commissioner (Central), Dhanbad on 11-9-1989, and the settlement has been implemented.

3. That there does not exist any dispute/demand of the workmen/union concerned in this matter and the same has been fully and finally settled.

4. That photocopies of the tri-partite settlement are attached with this petition and it is prayed that Hon'ble Tribunal may be pleased to pass an Award in terms of settlement arrived at between the parties.

For and on behalf of Management
(O. P. Garg).

Area Manager, Jitpur
(R. S. Murthy),
Advocate

For and on behalf of Workmen/Union
(Ganga Singh),

Branch Secretary, B.C.K.U.
(D. Mukherjee),
Advocate.

Memorandum & Settlement arrived at under Sec. 12(3) of the I.D. Act, 1947 between the management of Jitpur Colliery of M/s. IISCO and their workmen represented by the Bihar Colliery Kamgar Union (CITU) before the Asstt. Labour Commissioner (Central) Dhanbad-IV on 12th September, 1989

Representing the Management:

1. Shri O. P. Garg, Area Manager, Jitpur Colliery of M/s. IISCO., P.O. Jitpur, Dist. Dhanbad.
2. Shri R. Mohan, Manager (P) Jitpur Colliery of IISCO.

Representing the Workmen/Union :

1. Shri S. K. Baxi, Genl. Secretary, Bihar Colliery Kamgar Union Poddar Para, P.O. Jharia, Dist. Dhanbad.
2. Shri Ganga Singh, Branch Secretary, B.C.K.U., Jitpur Colliery Branch.

SHORT RECITAL OF THE CASE

The Branch Secretary, Bihar Colliery Kamgar Union, Jitpur Colliery Branch, had served a strike notice dated 21-12-1988 on the Area Manager, Jitpur Colliery, proposing to go on strike from 6-1-89 over their 9 point charter of demands. The matter was taken up in conciliation and discussions were held on various dates from 3-1-89 to 11-9-1989. During discussions, the Union agreed to raise dispute about their demands at Item No. 2 to 9 separately. Discussions took place with regard to demand at item No. 1 which relates to fixation of payment, category and work-load etc. in respect of the workmen engaged in Long Wall Face operation. Final discussions were held in conciliation on 12-9-1989. After detailed discussions, both the parties agreed to settle the demand on the following terms and conditions. This Settlement, however, excludes the Piece-rated workers of Group VA engaged in Long Wall Face Operation.

TERMS OF SETTLEMENT

1. It is agreed that the Long Wall Face Operation shall be carried out in 14 Seam Jitpur Colliery of M/s. IISCO as per terms and conditions and entitlement of incentive payment to such employees who shall work in Long Wall Face as stipulated in "Production Incentive Scheme for Long Wall Face in 14 Seam, Jitpur Colliery", attached to this Settlement as Annexure.

2. It is agreed that all employees comprising of Coaling/Safety group, shall perform All Men All Job on wards. This would be subject to the physical fitness and suitability of the workmen for All Men All job.

3. It is further agreed that the workmen who are in Category I, II and III of coaling/safety group and are engaged in Long Wall Face operation for All Men All Jobs, shall be place in Category-IV, while those of Category-IV of Coaling/Safety group and are engaged in Long Wall Face Operation for All Men All Jobs, shall be place in Category-V.

4. It is further agreed that the workmen not found physically fit and suitable for All Men All Jobs in Long Wall Face operation, shall be engaged in other Section in the Colliery in their existing designation and category.

5. It is also agreed that the workmen of Coaling/Safety Group were in Category-I, II and III, shall be paid difference of wages of their existing category and Category-IV and the workmen of Coaling/Safety group in Category-IV, shall be paid difference of their existing category and Cat-V for the period from 1-5-89 to 11-9-1989.

6. It is further agreed that the workmen shall be entitled to the benefit of Production Incentive Scheme as long as they are deployed in the Long Wall Face operation under this Scheme.

7. It is also agreed that if the benefit, by the introduction of the Production Incentive Scheme for the Long Wall Face falls short than the benefits which the workmen were getting in the name of 'Long Wall Face Allowance' as per the Tripartite Settlement dated 23-12-1983, they shall be entitled to receive these benefits mentioned in the settlement dated 23-12-1983.

8. It is agreed that this Settlement shall come into force from today i.e. 12-9-1989.

9. The Union agreed to withdraw the strike notice and by this Settlement all disputes relating to payment of wages to the workmen working in Long Wall Face Operation in Jitpur Colliery of IISCO, stands resolved.

10. The management and the Union shall submit their implementation report to the RLC(C), Dhanbad and the ALC(C), Dhanbad-IV within 2 months from the date of settlement, failing which it will be presumed that the Settlement, in question, has been implemented in full.

Representing the Management :

(O. P. Garg)
Area Manager, Jitpur
Colliery, IISCO.
(R. Mohan),
Manager (Personnel),
Jitpur Colliery

Representing the Workmen/Union :
(S. K. Baxi),

General Secretary, BCKU.
(Ganga Singh).

Secretary, BCKU Branch
in Jitpur Colliery.

WITNESSES:

1. (Nayeem Ansari)
P. No. 1791, Jitpur Colliery.
2. (Abu Mian),
P. No. 999, Jitpur Colly.
3. (Krishnapal Singh),
P. No. 207, Jitpur Colly.
4. (Jangi Ram),
P. No. 2043.

(A. N. MEHROTRA),
Asstt. Labour Commissioner (C)
Dhanbad-IV.

No. 1(293)/88-E-2

Dated : 12 September, 1989.

ANNEXURE-4

Production Incentive Scheme for Longwall Faces in 14 Seam,
Jitpur Colliery

1.0 Short title.

1.1 The scheme shall be called the "Production Incentive Scheme" for workers of longwall faces in 14 Seam of Jitpur Colliery and hereinafter shall be referred as the Scheme.

2.0 Definitions.

In the scheme unless there is anything repugnant in the subject or context, words and expressions used in the scheme shall have only the meaning assigned to these under this Clause and no other meaning.

2.1. "The Scheme" shall mean the Production Incentive Scheme for Longwall faces of 14 Seam Jitpur Coal Mine.

2.2. "The Company" shall mean the Jitpur Coal Mine of Indian Iron & Steel Co. Ltd.

2.3 "The Employees" shall mean any person who is covered by the scheme and specifically provided for in this scheme.

2.4 "Competent Authority" shall mean the Managing Director or any other officer of the company who may be specified for the purpose.

2.5 "Attendance" shall mean the actual presence of any employee at work in regular duty hours as recorded daily in the records of the Management as per the rules of the Company in force and excludes the following :-

- (i) Sunday/Off days.
- (ii) Absence from work for whatever reasons whether covered by leave or not. However, if employees are called for work on Sunday, they will be paid wages as per NCWA in force.

2.6 "Incentive Group" shall mean any of the Group specified in Appendix-I of the Scheme.

2.7 "The period of Settlement" shall mean the period for which the total incentive payment is to be calculated and settled which will be "month". The incentive month for this purpose would be the period from the first day to the last day of the calendar month.

2. "Incentive" means the amount payable monthly to eligible participants in accordance with this scheme. Incentive under the scheme for any settlement period shall be disbursed alongwith wages of the subsequent month as ad-

missible to relevant category/designation as laid down in NCWA in force for the time being.

2.9 The "Incentive Bonus Rate" shall mean the incentive amount for various grades and categories in rupees and paise corresponding to the calculated CMS for the period of settlement. This is obtained from the Incentive Bonus Table given in Appendix-IIA and IIB.

3.0 COVERAGE & ELIGIBILITY :

3.1 The scheme shall apply to the employees of longwall faces whose work is connected with production of Coal from longwall faces.

3.2 The employees covered under the Scheme shall be grouped in the categories as under :-

- (i) Coalging & Safety (Barricading & Stowing).
- (ii) Maintenance & Services.

3.3 The workmen and Supervisors of Coalging and Safety Group shall be eligible for incentive amount corresponding to OMS as per Appendix-IIA and the workman and Supervisors of Maintenance and Service Group shall be eligible for the amount corresponding to OMS as per Table at Appendix IIB.

3.4 The Incentive Groups, group composition are shown in Appendix-I.

3.5 The workers and Supervisors if transferred to another place/section will cease to get incentive as per this plan.

4.0 THE SCHEME :

4.1 The Scheme is based on the overall performance of the employees (Mining & Engineering) of longwall faces of 14 seam including the workers employed outside longwall faces upto Coal Bunker Top. The major jobs to be carried out by the employees covered by the Scheme are shown in Appendix IIB.

4.2 The performance of the employees covered by the Scheme shall be measured by means of OMS.

4.3 The OMS shall be calculated for a period of settlement as under :-

OMS.—Total output from all the faces during the settlement period.

Actual attendance on normal duty in manshifts of the employees as referred to in Appendix-I including the workers employed outside longwall faces upto Coal Bunker Top and Supervisory staff during the settlement period.

4.4 For arriving at the total normal duty in manshifts in the denominator above, all mandays of any additional men deployed on any day/days in the longwall section in question from some other area/areas not covered under this scheme will also be included.

4.5 The tonnage of coal produced from a face shall be ascertained by the weekly/monthly survey measurements of the advance of the face during the settlement period.

4.6 The OMS so calculated as well as production incentive scheme shall be applicable to all the employees as covered by the Scheme as well as to those deputed to work in the longwall Section in question.

4.7 The OMS shall be rounded off to the nearest single decimal fraction. Second decimal fractions less than half will be ignored and half and above will be counted as one.

4.8. Cut off level has been kept at 0.7 OMS.

4.9 However, no incentive earning shall accrue for OMS less than 0.7 out any day and no rounding off will be permitted for OMS less than 0.7.

4.10 The daily incentive rates for different values of OMS are given in Appendix IIA for coaling and Safety Group and in Appendix IIB for maintenance and service Group (Including Engineering).

5. INDIVIDUAL INCENTIVE MANNING :

5.1 The Incentive Earnings for a period of settlement shall be calculated as under :—

Individual Incentive earning for a period of settlement.	Daily rate of Incentive bonus for a period of settlement.	Actual attendance on normal duty in days during the settlement period.
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The daily rate for a particular OMS shall be directly read off from Appendix IIA & IIB.

5.2 However, in the case of Safety Group (Stowing & Barricading) the incentive amount thus calculated vide para 5.1 shall be reduced in the following manner if the leakage of sand while stowing exceeds 3 per cent of the total sand stowed in a month.

Leakage of sand as % of the total sand stowed in a month	Reduction of Incentive Amount
3%	Nil
4%	10%
5%	20%
6%	35%
7% and above	50%

The percentage of leakage of sand shall be ascertained by Survey measurements. The disincentive shall be applicable for 69 workers and staff comprising of the Safety Group.

6.0 GENERAL :

6.1.1 Withdrawal of the Scheme.

6.1.2 The company reserves the right to withdraw the Scheme in whole or part at any time or suspend its operation after giving due notice to the workers or their representative.

6.1.3 In any case, it will stand withdrawn if there is any increase/change in machines etc. and/or alteration of method of working or installation of shearer at longwall faces after giving due notice to the workers or their representatives.

6.2 Amending the Scheme.

6.2.1 The company may amend or substitute the scheme as and when the company considers it necessary to do so after giving due notice to the workers of their representatives.

6.3 Right to Transfer.

6.3.1 Management shall have the right to transfer workmen from one district to other depending upon work situation.

6.3.2 The workers if transferred to another place or district will cease to get incentive as per this plan. However, if the new assigned work place, is covered by any incentive scheme, they will participate in that scheme.

6.4. WORK AVAILABILITY :

6.4.1 While the company will endeavour to provide enough work yet it shall not be reasonable for any cause restricting the work availability i.e., non-availability of materials, machines, spares, power or any breakdown or technical or other considerations etc.

6.4.2 The company also reserves the right to transfer machines or men from one group to another depending on work availability.

6.4.3 Management may exclude any one or group of men from the incentive earning for wilful allowing down work or stoppage of work for definite period which may be specified.

6.5.0 MODIFICATION|REVISION OF STANDARDS

6.5.1 Incentive amount earned by a worker shall not count in calculating basic wages/salary and other fringe benefits, such as P. F. contribution attendance bonus, underground allowance, compensation, lay off wages, overtime wages and any other allowance and benefits.

6.5.2 With the introduction of Incentive Scheme for longwall faces at 14 seam the longwall face allowance presently being paid to the employees working in longwall faces will be withdrawn.

6.6.0 MODIFICATION|REVISION OF STANDARDS

6.6.1 Whenever any change occurs in the working conditions, geological conditions, technological changes, method of work etc. affecting work standards, the company reserves the right to revise the work standard/scheme or criteria, incentive rates etc. after giving due notice to workers or their representatives.

APPENDIX—I

IISCO—JITPUR COLLIERY 14 SEAM LONGWALL OPERATION

COALING & SAFETY GROUP :

Incentive Group	Designation	No. of Duty posts/ shifts.
I. Coaling	Overman	1
	Mining Sirdar	2
	Shotfirer	1
	Spray Fitter	1
	Timber Mistry	5
	Loader/Shoveller	18
	Timber Mazdoor	10
	Conveyor Operator	3
	Explosive Carrier	1
	Spray Fitter Helper	1
	Conv. Shaker	4

APPENDIX—I-Contd.

Incentive Group	Designation	No. of duty post/shift.
2. Safety (Barricading and Stowing)	Overman	1
	Mining Sirdar	2
	Stowing Fitter	2
	Timber Ministry	3
	Shoveller	3
	Timber Mazdoor	6
	Stowing Helper	6
	Total Safety	23
3. Maintenance and Service.		
(a) Service	Sr. Overman	1
	Conv. Operator/Shoveller	7+4*
	Coal Breaker (Bunker Top)	1
	Total Service	9+4*
(b) Engineering	Foreman	1*
	Asstt. Foreman	1
	Elec. Supervisor	1
	Fitter	2+1*
	Helper	2+1*
	Electrician	2
	Elect. Helper	2
	Tyndel/Tyndel Zamader	7
	Total Maintenance—	17+3*
	TOTAL MAINT. & SERVICE	26+7*
	OVERALL TOTAL	76+7*

Note : —3 Shift working.

* Only for General shift.

APPENDIX—II

THE INDIAN IRON & STEEL CO. LTD.,

NOONODIH—JITPUR COLLIERY

14 Seam Longwall Incentive Scheme

INCENTIVE RATE (Rs./DAY) PER EMPLOYEE FOR FULL ATTENDANCE

APPENDIX—IIA

COALING & SAFETY GROUP								
O.M.S.	Catetory						Supervisory	
	I & II	III	IV	V	VI	C	B	A
0.7	2.88	2.88	2.88	3.08	3.27	3.46	3.85	4.81
0.9	3.46	3.46	3.46	3.46	3.46	5.00	5.00	5.00

COALING & SAFETY GROUP

CATEGORY							SUPERVISORY	
Q:M.S.	I & II	III	IV	V	VI	C	B	A
0.9	4.23	4.23	4.23	4.23	4.23	5.77	5.77	5.77
1.0	5.58	5.58	5.58	5.58	5.58	7.12	7.12	7.12
1.1	7.31	7.31	7.31	7.31	7.31	8.85	8.85	8.85
1.2	9.62	9.62	9.62	9.62	9.62	11.15	11.15	11.15
1.3	12.69	12.69	12.69	12.69	12.69	14.23	14.23	14.23
1.4	16.54	16.54	16.54	16.54	16.54	18.08	18.08	18.08

APPENDIX—II.—B

SERVICE & MAINTENANCE GROUP

CATEGORY							SUPERVISORY	
	I & II	III	IV	V	VI	C	B	A
	1.92	2.31	2.88	3.08	3.27	3.46	3.85	4.81
	3.11	3.11	3.11	3.11	3.11	4.50	4.50	4.50
	3.81	3.81	3.81	3.81	3.81	5.19	5.19	5.19
	5.02	5.02	5.02	5.02	5.02	6.41	6.41	6.41
	6.58	6.58	6.58	6.58	6.58	7.97	7.97	7.97
	8.66	8.66	8.66	8.66	8.66	10.04	10.04	10.04
	11.42	11.42	11.42	11.42	11.42	12.81	12.81	12.81
	14.89	14.89	14.89	14.89	14.89	16.27	16.27	16.27

APPENDIX-III

14. SEAM LONGWALL FACE OPERATION MAJOR JOBS TO BE CARRIED OUT

The following major jobs shall be carried out in long-wall faces by coaling and safety group :—

- Drilling and blasting including carrying of explosives from surfaces, carrying of stemming clay from underground to faces and helping the shotfirer in stemming shot holes.
- Water spraying of the faces before and after blasting.
- Pressing of loose roof and face coal and breaking of big lumps of coal.
- Erecting support in faces as per systematic timber support rules as laid down by DCMS/Management from time to time and any other support required as situation demands.
- Shovelling of the blasted and the dressed coal on to the face conveyor.
- Digging out floor coal by pick to give the longwall face uniform gradient for shaking and proper running of the face conveyor.
- Cleaning of all the scattered coal from the stowing barricade side of the face and loading the same on to the surface conveyor.
- Carrying supporting materials to the work spot
- Barricading, boxing, jointing of stowing range and stowing.
- Snaking of the face conveyor.
- Carrying out any alternative job as deemed fit by the management in the event of any breakdown of machinery or stoppage of coal getting operations at the face.

- To carry out all jobs related to ensure safety whether specified above or not.

- To carry on all house keeping jobs to ensure that the work area is kept clean and tidy for safe working.

The following jobs shall be carried out by the service & Maintenance Group :—

- Operating the conveyor and cleaning or spillage coal at the conveyor transfer points and sides of the conveyor by the conveyor operator.
- Breaking of coal at Bunker Top.
- Maintenance of conveyors, drills and other equipments and machineries installed from longwall face to coal bunker top, etc. along with all electrical and mechanical accessories.
- Carrying out any alternative job as deemed fit by the management in the event of any breakdown of machinery or stoppage of the coal getting operation at the face.
- To carry out all the jobs related to ensure safety whether specified above or not.
- To carry out all house keeping jobs to ensure that the work area is kept clean and tidy for safe working.

का. प्र. 1050:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वये में, केन्द्रीय सरकार, जनरल मैनेजर, केन्द्रीय मैनेजर्स भारत कॉरपोरेशन लि. का सुदामसीत क्षेत्र के प्रबन्धन से सम्बन्धित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2), धनबाद के पचास को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-3-1990 को प्राप्त हुआ था।

S.O. 1050.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of General Manager, Canteen, Sudamdih Area of M/s. BCCL and their workmen, which was received by the Central Government on the 27th March, 1990.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 198 of 1987

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947

PARTIES :

Employers in relation to the management of General Manager, Canteen Sudamdih Area of M/s. Bharat Coking Coal Ltd. and their workmen.

APPEARANCES :

On behalf of the workmen—Shri Lalit Burman, Vice President, United Coal Workers Union.

On behalf of the employers—Shri R. S. Murthy, Advocate.

STATE : Bihar

INDUSTRY : Coal.

Dhanbad, the 19th March, 1990

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/54/87-D.III(A), dated, the 14th July, 1987.

SCHEDULE

"Whether the demand of United Coal Workers Union for regularisation of Shri Naimuddin Ansari and 5 others as in Annexure as workmen of Area Office of General Manager, Sudamdih, M/s. Bharat Coking Coal Limited and pay and allowances as per National Coal Wage Agreement-III is justified? If so, to what relief these workmen are entitled?"

ANNEXURE

1. Shri Mansur
2. Shri Qadiuddin
3. Shri Sirajuddin
4. Shri Gafur Ansari
5. Shri Prakash Nath Verma.

The case of the workmen is that the concerned workman Nasiruddin Ansari and 5 others as mentioned in the Annexure to the schedule of order of reference are working in the Canteen of the Area Office of Sudamdih Area in different capacities. The concerned workman Naimuddin Ansari has been working as Canteen Manager, Mansur Ali as Salesman/Clerk, Kadiruddin as Canteen Cook, Sirajuddin as Canteen Cook and Gaffar Ansari and Prakash Nath Verma as Canteen boys. The said canteen is situated in a building allotted by the management near the Area Office of the General Manager of Sudamdih Area. The management provided utensils, furnitures, water, coal for fuel and electricity free of cost for the said canteen. In the said canteen meals, singhara, Pakuri, Chhap, Sweets etc. apart from Tea coffee and Snacks is prepared and sold in the said canteen. The canteen serves the eatables to the officers and staff of the Area Office which is an establishment of BCCL for the management of the collieries and Washeries under Sudamdih Area in all matters connected with the produc-

tion of coal. The workers of Sudamdih colliery also utilised the canteen. The functioning of the canteen is under the control and supervision of the Dy. Manager (Administration) and Sr. Administrative Officer of Sudamdih Area. The bills of the canteen are being passed by the Administration and Finance Department of the area. Although the concerned workman have been working in the canteen of the Area Office, the management refused to regularise them as departmental workers and refused to pay them the grade/category/wages as per NCWA-II/III. The concerned workmen made repeated requests to the management for regularising them as departmental workers with the consequent benefits of the wages and other benefits. But the management went on giving verbal assurance. When the management refused to concede to the just demand of the workmen their union, namely, the United Coal Workers Union raised an industrial dispute before the ALC(C), Dhanbad which ended in failure of the conciliation and thereafter the Government referred the dispute for adjudication to this Tribunal. As the concerned workman have working in the canteen of the Area office of Sudamdih area for a long period the demand of the workmen that they should be regularised as departmental workers and should be paid the wages, allowance and other benefits as per NCWA-III is fully justified. It is proved that an Award be passed holding that the concerned workmen are entitled to be regularised as departmental workers with all benefits of a departmental workers as per NCWA-III.

The case of the management is that at no time there was any employer employee relationship between the management and the concerned workmen. There is no valid industrial dispute in the eye of law within the meaning of Section 2(k) of the I.D. Act. The Area office of the G.M. of the Sudamdih Area is not located in the premises of the mines and it is not a part of the Mines and therefore the Central Government has no jurisdiction to refer any dispute relating to the Sudamdih Area office to this Tribunal.

Sudamdih Area office is an office of the G.M. Sudamdih Area and there is no requirement under any statute that the management should provide a canteen in such an office. A few years ago the concerned person Shri Naimuddin was allowed to set up a tea stall on the ground floor by the side of the garrage of the office of the G.M. Sudamdih Area and to supply tea to the employees. Shri Naimuddin is functioning as a tea stall holder and was serving tea not only to the employees of the office but even to the outsiders. After sometime he started selling samosa also. Naimuddin was making and supplying tea and Samosa only and he was keeping 2 or 3 persons to help him. Naimuddin also used to supply tea to the officer at the time of visit and other officers and he also used to supply tea during meetings. He used to submit bill to the management and received payment. 2 or 3 persons who are helping Naimuddin in his Tea stall were being changed from time to time. The management has absolutely no control over Shri Naimuddin's business or activities or the way he conducted his tea stall as any other Tea stall holder. Neither Naimuddin nor the persons named in the annexure to the schedule of the order of reference were engaged by the management at any time as employees or for the trade and business of the management. In view of the position that the management never engaged the concerned persons for any work whatsoever and there being no employer employee relationship between them, the question of regularising the concerned persons by the management as workmen of Area office of the General Manager, Sudamdih area or paying them any allowance at any specified rate or as per NCWA-III does not arise. The management in fact could obtain tea and snacks from any other tea stall and mere purchase of tea and snacks from the tea stall of Naimuddin cannot be used to establish that the said tea stall was a canteen of the management being controlled and supervise by the management. The employees themselves pay for the tea and samosa consumed by them and it is not the responsibility of the management to supply such items to their employees. The Area office of the G.M. Sudamdih Area has about 200 workers and the office works only during day time in one shift.

Sudamdih Colliery is at a considerable distance from the Area office and the colliery has its own canteen established under the Mines Act which has been functioning for the past several years.

The management constructed a canteen building in 1986 adjacent to the office of the General Manager Sudamdih Area and a canteen was established with effect from 31-10-86 which is running. The said canteen has been preparing food for the employees. In this view of the matter the tea stall of concerned person Shri Naimuddin is redundant and can be closed. In view of the present litigation the management has not taken action to close the tea shop of Naimuddin. The present industrial dispute has been raised forestalling such action of the management. On the above facts it is prayed on behalf of the management that the Award be passed in favour of the management.

The points for decision are :—

- (1) Whether tea shop being run by Naimuddin Ansari and the other concerned persons is the departmental canteen of Sudamdih Area office.
- (2) Whether there is relationship of employer and employee between the management and the concerned persons.
- (3) Whether the demand of the union for their departmentalisation and payment of pay allowances as per NCWA-III is justified?

The workmen and the management have each examined one witness in support of their respective case. The documents of the workmen are marked Ext. W-1 to W-2 series and the documents of the management are marked Ext. M-1 series.

Point No. 1

Admittedly, Naimuddin and his men are running a tea stall in a room provided by the management of Sudamdih Area office on the ground floor by the side of garage of the Sudamdih area office. The case of the concerned person is that the management has provided them with utensils, furniture, coal for fuel etc. and it was controlled and supervised by the officers of the area office. WW-1 is concerned person Naimuddin. He has stated that the building in which he is running the canteen belonged to the management and that in 1972 the management of Sudamdih allowed him the said building for running the canteen. He stated that the management provided furniture and utensils, coal, electricity and water in the said canteen. He has stated that he provides eatables materials from his canteen/tea stall in the area office on order being given by the employees. There is no dispute about the fact that the management of Sudamdih Area office were taking tea samosa etc. from the tea stall of the concerned persons and that bill used to be presented for the same and after the bill being passed payment was made to Naimuddin Ansari. In cross-examination WW-1 has stated that he has evidence to show that the management was providing coal for his canteen. He has stated that he has no paper with him to show that the management had provided utensils and furnitures in the canteen. His evidence further shows that the teacher and students of the neighbouring Indian School of leaning also take their tea and break fast in this canteen. He has stated that the concerned persons Mansur and Quaddiruddin are his servants and does not say that they were given employment in his tea stall by the management. It will thus appear that there is absolutely no evidence to show that the management was providing utensils, furnitures, coal and electricity free of cost to the concerned person Naimuddin. His evidence in the cross-examination further shows that the management has constructed a large building for canteen to the east of his tea stall. He has stated that the said canteen building has always remained locked and it was never opened. On further cross-examination he was pressed to admit that sometimes the said canteen opens and works. He has denied that the said canteen of the management is running regularly since 31-10-86. He has also named the persons who

are engaged in the said canteen. He has stated that Bajinath Sah is a cook in the said canteen building who was formerly working as Mali. He has stated that Smt. Kamla Devi, Basu Munda and Smt. Jhandi Bauri have been brought in the said canteen building who were formerly working as Peons. He has also stated that formerly Krishna Murari was working as a Clerk in the said canteen and thereafter Ashok Kumar is a clerk in the said canteen. It is clear from the evidence of one of the concerned workman who is said to run the tea stall that there was no special facilities given to the tea stall of Naimuddin by the management and the story that the workmen built that utensils, furniture, coal etc. used to be supplied by the management has no foundation and lacks proof. The other matter of importance is that the management is already running a canteen in a newly constructed canteen building and has provided employees for running the said canteen. The evidence of MW-1 will show that about 60 workmen take their meals at day time in the said canteen but the management have not yet made arrangement for supplying tea and snacks to his workmen. MW-1 has stated that Naimuddin was allowed by the management to prepare tea in the car shed of area office and subsequently Naimuddin was allowed with a small room attached to the shed in which he is presently running his tea stall. He has denied that the management is provided Naimuddin with any furniture and utensils for running his tea stall. He has denied that the concerned persons are running a canteen for the area office. He has stated that 2 or 3 small boys are working in the tea shop of Naimuddin from time to time who are also not regular and are being changed on and often. He has admitted that Naimuddin submits his bill for the supply of tea and snacks for the supply of officers and the said bills are sent to the Finance Department which approves the amount for payment. He has proved those bills which are marked Ext. M-1 to M-1/30. The workmen have also filed photo copy of notesheets for the payment of the bills of Naimuddin in respect of the eatables supplied by him and they are marked Ext. W-1 to W-1/7 and Ext. W-2 to Ext. W-2/1. There is no dispute over the supply of tea and snacks to the officers of Sudamdih Area office by Naimuddin from his tea stall. But the case of the management is that eatables were being purchased as from any other shop, by the officers of the Sudamdih Area Office and that in itself will not show that Shri Naimuddin was running a departmental canteen of Sudamdih Area office. MW-1 has stated in his cross-examination that there is one canteen for Sudamdih colliery. He has asserted that the canteen started by the Area Office in 1986 provides lunch to the office staff. But the Area office is presented having tea from Naimuddin's tea shop and presently tea is not provided from the canteen of the Area office due to the pendency of this reference. He has stated that there is one cook and 3 servants in the canteen and the same is regularly providing lunch to the office staff.

There is no evidence to the effect as to how the office of Sudamdih Area office were controlling and supervising the Tea stall of concerned person Naimuddin. There is no evidence to show that the management had any control in fixing the price of the materials being sold by Naimuddin from his Tea stall or that the management had provided any subsidy to Naimuddin so that tea and snacks may be provided at a reasonable rate to the employees of the Area office.

Taking all the facts evidence and circumstances into consideration I hold that the tea shop being run by Naimuddin Ansari and the other concerned persons was never the departmental canteen of Sudamdih Area Office.

Point No. 2

As discussed in detail while discussing point No. 1 it has been found that the tea stall being run by Naimuddin and his men is private tea shop in which Naimuddin used to make his own appointment to which the management of Sudamdih Area office had no concern. We have also seen from the evidence in the case which is almost admitted that the management of Area office has already constructed a canteen building and the same is being run by departmental persons. In view of the fact that the management has already provided a canteen for the employees of the Area office, there

appears to be no need for having another canteen in the said area office for tea and snacks. It has been stated in the evidence of managements witness that they have not as yet started providing tea and snacks in the canteen because of this industrial dispute pending before this Tribunal. Moreover Sudamdih colliery has already a canteen of its own which is required to be maintained under the Mines Act and regulations. The maintenance of departmental canteen for an establishment came into existence for the first time in NCWA-III in para 8.9.1 and it appears that the management has provided with a departmental canteen for the establishment of its area office of Sudamdih colliery and as such the concerned persons claim that it is running a departmental canteen does not at all appear to be correct. Considering the matter from all aspects I hold that there is no employer-employee relationship between the management of Sudamdih Area office and the concerned persons.

Point No. 3

In view of the finding on point No. 1 and 2 I hold that the demand of the union for their departmentalisation and payment of pay and allowances as per NCWA-III is not justified as they were never employees of Sudamdih Area Office.

In the result, I hold that the demand of the United Coal Workers Union for regularisation of Naimuddin and 5 others as named in the annexure to the schedule of reference as workmen of Sudamdih area office of M/s. BCCL and for payment of pay and allowances as per NCWA-III is not justified and consequently they are entitled to no relief.

This is my Award.

I. N. SINHA, Presiding Officer

[No. L-20012(34)/87-D.III(A)/JR(Coal-I)]

K. J. DYVA PRASAD, Desk Officer

नई दिल्ली, 2 मार्च, 1990

का. आ. 1051:—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 16-3-90 को उम तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (धारा 44 और 45 के सिवाय के जो पहले ही प्रवृत्त की जा चुकी है) और अध्याय 5 और 6 (धारा 76 की उपधारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के प्रबन्ध बिहार राज्य के निम्नलिखित क्षेत्र में प्रवृत्त होंगे, अर्थात्:—

स्थान	राजस्व ग्राम	राजस्व स्थान एवं नं.	जिला
डुमराव	डुमराव	डुमराव 168	भोजपुर

[सं. य. 1-38013/7/90-एस. एस. 1]

New Delhi, the 2nd March, 1990

S.O. 1051.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 16th March, 1990 as the date on which the provisions of Chapter IV (except sections 44 and 45 which have already brought into force) and Chapters V and VI (except sub-section (1) of section 76 and 77, 78, 79 and 81 which

have already been brought into force) of the said Act shall come into force in the following areas in the State of Bihar namely.

Place	Revenue Village	Revenue Thana and No.	District
Dumrao	Dumrao	Dumrao—168	Bhojpur

[No. S-38013/7/90-SS.I]

नई दिल्ली, 19 मार्च, 1990

का. आ. 1052:—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1-4-90 को उम तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (धारा 44 और 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है, अध्याय 5 और 6) धारा 76 की उपधारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के प्रबन्ध महाराष्ट्र राज्य के निम्नलिखित क्षेत्र में प्रवृत्त होंगे, अर्थात्:—

“नासिक की बड़ी हुई नगरपालिका सीमाओं के अन्तर्गत आने वाले क्षेत्र, राजस्व ग्राम महरसुल, डस्का, पंचक और वडाला के सिवाय जहाँ उक्त व्यवस्था पहले ही प्रवृत्त किए जा चुके हैं।

[संख्या एस—38013/8/90-एस. एस. 1]

New Delhi, the 19th March, 1990

S.O. 1052.—In exercise of the powers conferred by sub-section (3) of section 1 of the Employees State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 1st April, 1990 as the date on which the provisions of Chapter IV (except sections 44 and 45 which have already brought into force) and Chapters V and VI (except sub-section (1) of sections 76, 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Maharashtra namely:

“The areas comprising of the extended Municipal Limit of Nasik except revenue Villages Mharsul, Daska, Panchak and Vadala where the said provisions of the Act have already been brought into force.”

[No. S-38013/8/90-SS.I]

नई दिल्ली, 27 मार्च, 1990

का. आ. 153 :—केन्द्रीय सरकार ने कर्मचारी राज्य बीमा अधिनियम, 1958 (1948 का 34) की धारा 8 के खण्ड (घ) के अनुसरण में श्री के. सी. बर्मा के स्थान पर श्री बी. पी. साहू, सचिव, श्रम मंत्रालय को कर्मचारी राज्य बीमा निगम स्थायी समिति के अध्यक्ष के रूप में नियुक्त किया है,

अतः जब केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 4 अनुसूचना में, भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का. आ. 293 (घ), दिनांक 8 जनवरी, 1988 में निम्नलिखित संशोधन करती है, अर्थात्:—

उक्त अधिसूचना में, “(केन्द्र सरकार द्वारा धारा 8 के खण्ड (घ) के अधीन नामनिर्दिष्ट)” शेष के नीचे मद्ध 1 के सामने की प्रविष्टि के स्थान पर निम्नलिखित प्रविष्टि रखी जाएगी, अर्थात्:—

श्री बी. पी. साहू,

सचिव,

श्रम मंत्रालय, भारत सरकार

नई दिल्ली।

[सं. य. 1-16012/16/87-एस. एस. 1]

ए. के. मट्टारानी, अधीक्षक सचिव

New Delhi, the 27th March, 1990

S.O. 1053.—Whereas the Central Government has, in pursuance of clause (a) of section 8 of the Employees' State Insurance Act, 1948 (34 of 1948) appointed Shri V. P. Sawhney, Secretary, Ministry of Labour, New Delhi as Chairman of the Standing Committee of the Employees' State Insurance Corporation, in place of Shri K. C. Sharma.

Now, therefore, in pursuance of section 8 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Labour S.O. No. 293, dated the 8th January, 1988, namely:—

In the said notification, under the heading "(Nominated by the Central Government under clause (a) of section 8)", for entry against Serial No. 1, the following entry shall be substituted, namely:—

Shri V. P. Sawhney,
Secretary,
Ministry of Labour,
Government of India,
New Delhi.

[No. U-16012/16/87-SS.I]

A. K. BHATTARAI, Under Secy.

नई दिल्ली, 5 मार्च, 1990

का. आ. 1054 :—उत्प्रवास अधिनियम, 1983 (1983 का 31) की धारा 5 द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार श्रम मंत्रालय में नियुक्त अवर सचिव श्री शिंगारा सिंह को दिनांक 5-3-90 से दिनांक 7-3-90 तक उत्प्रवासी संरक्षी, दिल्ली के सभी कार्यों को करने के लिए प्राधिकृत करती है।

[सं. ए-22012/1/90—उत्प्र.]

New Delhi, the 5th March, 1990

S.O. 1054.—In exercise of the powers conferred by Section 5 of the Emigration Act, 1983 (31 of 1983), the Central Government hereby authorises Shri Shingara Singh, Under Secretary, Ministry of Labour, New Delhi to perform all functions of Protector of Emigrants, Delhi in the office of Protector of Emigrants, Delhi from 5-3-90 to 7-3-90.

[No. A-22012/1/90-Emig.]

नई दिल्ली, 16 मार्च, 1990

का. आ. 1055 :—उत्प्रवास अधिनियम 1983 (1983 का 31) की धारा 5 द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उत्प्रवासी संरक्षी कार्यालय, मद्रास में नियुक्त सहायक श्री अर. देसिंगराजन को दिनांक 8-3-90 को उत्प्रवासी संरक्षी, मद्रास के सभी कार्यों को करने के लिए प्राधिकृत करती है।

[सं. ए-22012(1)/90—उत्प्र.]

New Delhi, the 16th March, 1990

S.O. 1055.—In exercise of the powers conferred by Section 5 of the Emigration Act, 1983 (31 of 1983), the Central Government hereby authorises Shri R. Desingrajan, Assistant in the office of Protector of Emigrants, Madras to perform all functions of Protector of Emigrants, Madras in the office of Protector of Emigrants, Madras on 8-3-90.

[No. A-22012/1/90-Emig.]

का. आ. 1056 :—उत्प्रवास अधिनियम, 1983 (1983 का 31) की धारा 5 द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उत्प्रवासी संरक्षी कार्यालय, कोचीन में नियुक्त सहायक श्री के. के. चामस को दिनांक 19-3-90 से दिनांक 23-3-90 तक उत्प्रवासी संरक्षी, कोचीन के सभी कार्यों को करने के लिए प्राधिकृत करती है।

[सं. ए-22012/1/90—उत्प्र.]

S.O. 1056.—In exercise of the powers conferred by Section 5 of the Emigration Act, 1983 (31 of 1983), the Central Government hereby authorises Shri K. K. Thomas, Assistant in the office of Protector of Emigrants, Cochin to perform all functions of Protector of Emigrants, Cochin in the office of Protector of Emigrants, Cochin from 19-3-90 to 23-3-90.

[No. A-22012/1/90-Emig.]

नई दिल्ली, 20 मार्च, 1990

का. आ. 1056 :—उत्प्रवास अधिनियम, 1983 (1983 का 31) की धारा 3 की उपधारा (1) द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार श्री एस. एम. गुप्ता, अनुभाग अधिकारी को दिनांक 22-3-90 से अगली प्रादेश जारी होने तक उत्प्रवासी संरक्षी II बम्बई के रूप में नियुक्त करती है।

[सं. ए-22012/1/90—उत्प्र.]

प्रदीप सिंह, अवर सचिव

New Delhi, the 20th March, 1990

S.O. 1057.—In exercise of the powers conferred by Section 3 sub-section (1) of the Emigration Act, 1983 (31 of 1983), the Central Government hereby appoints Shri S. S. Gupta, Section Officer as Protector of Emigrants-II, Bombay with effect from 22-3-90 till further orders.

[No. A-22012/1/90-Emig.]
PRADEEP SINGH, Under Secy.

नई दिल्ली, 5 मार्च, 1990

का. आ. 1057 :—लौह भस्मक खान, मैंगनीज भस्मक खान तथा क्रोम भस्मक खान श्रम कल्याण निधि नियम, 1978 के नियम 3 के उपनियम (2) के साथ पठित लौह भस्मक खान, मैंगनीज भस्मक खान तथा क्रोम भस्मक खान श्रम कल्याण निधि अधिनियम, 1976 (1976 का 61) की धारा 5 द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार श्री के. एन. त्रिपाठी मुख्य कामिक प्रबंधक, मैंगनीज और (इंडिया) लि., माउंट रोड, नागपुर को महाराष्ट्र राज्य की लौह भस्मक खान, मैंगनीज भस्मक खान तथा क्रोम भस्मक खान श्रम कल्याण निधि के सलाहकार समिति का सदस्य नियुक्त करती है तथा 18 जनवरी, 1988 को भारत के राजपत्र, भाग II, खंड 3 उप खंड (ii) के पृष्ठ 152 पर प्रकाशित भारत सरकार के श्रम मंत्रालय की तारीख 5 जनवरी, 1988 की अधिसूचना संख्या का. आ. 173 को संशोधित करती है।

उक्त अधिसूचना में, क्रमांक 5 तथा उनसे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित प्रतिस्थापित किया जाएगा अर्थात्:—

"5. श्री के. एन. त्रिपाठी, मुख्य कामिक प्रबंधक, मैंगनीज और (इंडिया) लि., माउंट रोड, नागपुर"।

[संख्या यू 19012/21/84 - कल्याण - II (सं.)]

New Delhi, the 5th March, 1990

S.O. 1058.—In exercise of the powers conferred by section 5 of the Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976 (61 of 1976), read with sub-rule (2) of rule 3 of Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Rules, 1978, the Central Government hereby appoints Shri K. N. Tripathi, Chief Personnel Manager, Manganese Ore (India) Ltd., Mount Road, Nagpur, as a member of the Advisory Committee of the Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund for the State of Maharashtra and hereby amends the notification of the Government of India in the Ministry of Labour No. S.O. 173, dated the 5th January, 1988 published at page 252 of the Gazette of India, Part II, Section 3, sub-section (ii), dated the 16th January, 1988;

In the said notification, for Serial No. 5 and the entries relating thereto, the following shall be substituted, namely:—

"5. Shri K. N. Tripathi,
Chief Personnel Manager,
Manganese Ore (India) Ltd.,
Mount Road,
Nagpur."

[No. U-19012/21/84-W.II(C)]

नई दिल्ली, 21 मार्च, 1990

का. पा. 1059:— लोह अयस्क खान, मैंगनीज अयस्क खान और क्रोम अयस्क खान अम कल्याण निधि अधिनियम, 1976 (1976 का 61) की धारा 10 के अनुसरण में केन्द्रीय सरकार वितीय वर्ष 1988-89 के दौरान उस वर्ष के लिए लेखों के विवरण सहित इस अधिनियम के अन्तर्गत वित्तीय कार्यकलापों पर निम्नलिखित रिपोर्ट प्रकाशित करती है।

भाग - 1

(क) सामान्य : लोह अयस्क खान अम कल्याण उपकर अधिनियम, 1961 को लोह अयस्क खान उद्योग में कार्यरत खनिकों के कल्याण को बढ़ाने के लिए वित्तीय कार्यकलापों के लिए उपकर लगाने और एकत्रित करने की व्यवस्था करने के लिए बनाया गया था। यह अधिनियम पहली अक्टूबर, 1963 को लागू हुआ। इस अधिनियम को लोह अयस्क खान अम कल्याण उपकर संशोधित अधिनियम 1970 (1970 का 41) द्वारा जो पहली अक्टूबर, 1974 को लागू किया गया था और पुनः लोह अयस्क खान और मैंगनीज अयस्क खान अम कल्याण उपकर अधिनियम 1976 (1976 का 55) द्वारा जो कि पहली सितम्बर, 1978 से लागू हुआ प्रतिस्थापित किया गया जिससे मैंगनीज अयस्क खानों में नियुक्त कर्मचारी भी इसके अन्तर्गत आ गए। पिछली बार संशोधन निम्नलिखित किये गये थे :

(i) लोह अयस्क खान और मैंगनीज अयस्क खान और क्रोम अयस्क खान अम कल्याण निधि (संशोधन) अधिनियम, 1982 (1982 का 45)।

(ii) लोह अयस्क खान और मैंगनीज अयस्क खान और क्रोम अयस्क खान अम कल्याण उपकर (संशोधन) अधिनियम, 1982 (1982 का 44)।

1982 के संशोधन द्वारा पहली जुलाई, 1983 से क्रोम अयस्क पर उपकर उसी प्रकार लगाया गया है और एकत्रित किया गया है जैसे लोह अयस्क और मैंगनीज अयस्क के लिए होता है और क्रोम अयस्क खानों में नियुक्त कर्मचारियों को शामिल किया गया है। इस अधिनियम में नियत किए गए या आंशिक रूप से उपयोग किए गए लोह अयस्क पर एक रुपया प्रति मोटोरिक टन, मैंगनीज अयस्क और क्रोम अयस्क पर छह रुपये प्रति मोटोरिक टन से अधिक की दर से उपकर लगाने के लिए व्यवस्था है। लोह अयस्क पर उपकर लगाने की दर पहली जुलाई, 1981 से 24 पैसे प्रति मोटोरिक टन से बढ़ाकर 50 पैसे प्रति मोटोरिक टन कर दी गई थी। मैंगनीज अयस्क और क्रोम अयस्क पर उपकर को वर्तमान दर क्रमशः एक रुपया प्रति मोटोरिक टन और तीन रुपये प्रति मोटोरिक टन है। उपकर की राशि का उपयोग मुख्यतः सार्वजनिक स्वास्थ्य और सफाई, बीमारियों की रोकथाम और आवास सुविधाओं आदि के सुधार पर किया जाता है। कल्याण सुविधाओं को सीधे या हेक्केदारों के माध्यम से नियुक्त कर्मचारियों को दिया जाता है।

इस उपकर को नियत किए गए लोह अयस्क, मैंगनीज अयस्क और क्रोम अयस्क पर सीमा शुल्क के रूप में और आंतरिक खपत किए गए अयस्क पर उत्पाद शुल्क के रूप में लगाया जाता है। कल्याण आयुक्तों को उपकर प्रायुक्त के रूप में भी घोषित किया गया है और आंतरिक खपत पर उपकर एकत्रित करने के उद्देश्य से उनका क्षेत्राधिकार अधिसूचित किया गया है। कल्याण उपकर को सीमाशुल्क के रूप में राजस्व विभाग द्वारा एकत्रित किया जाता है, जिन्हें एकत्रीकरण प्रभार के रूप में एक प्रतिशत दिया जाता है।

कल्याणकारी कार्यकलाप

वर्ष 1988-89 के दौरान, यह कल्याण कार्यकलाप, जिनकी वित्त व्यवस्था लोह अयस्क खान, मैंगनीज अयस्क खान और क्रोम अयस्क खान अम कल्याण निधि से की गई है, नीचे दिए गए हैं:—

(i) चिकित्सा सुविधाएं :

उन कर्मचारियों और उनके आश्रितों को जो 1600 रुपये तक मूल वेतन प्राप्त कर रहे हैं निधि संगठन द्वारा चिकित्सा सहायता दी गई। इन कर्मचारियों और उनके आश्रितों को 5 केन्द्रीय अस्पतालों (बिहार, उड़ीसा मध्य प्रदेश, कर्नाटक और गोवा राज्य में एक) तथा निधि संगठन के अश्वेत स्थापित किए गए 21 शोधालयों/प्राथमिक स्वास्थ्य केन्द्रों और 1 प्रसूति व दाल कल्याण केन्द्र में सुविधाएं उपलब्ध कराई गई थी। वर्ष के दौरान शोधालयों/प्राथमिक स्वास्थ्य केन्द्रों में कुल उपस्थिति 256391 थी। अस्पतालों में बाह्य रोगों विभाग में संख्या 112730 थी, जबकि अस्तरंग में इलाज किए गए रोगियों की संख्या 45,190 थी। शोधालयों और अस्पतालों में दवाईयों की खरीद पर 2324673 रु. की राशि खर्च की गई थी। डॉ. बी. के. पोडित कर्मचारियों के लिए 10 पलंग आरक्षित किए गए हैं और उनके आश्रितों को 4437 रुपये निर्बाह भत्ते के रूप में दिए गए हैं। डॉ. बी. अस्पतालों में पलंगों के आरक्षण का योजना के अंतर्गत डॉ. बी. से पोडित खनिकों के घरेलू इलाज के लिए 39 डॉ. बी. रोगियों को राहत प्रदान की गई और उनके आश्रितों को निर्बाह भत्ते के रूप में 545 रुपये की राशि दी गई थी। कुष्ठरोग राहत योजना के अश्वेत, एक प्रयोग को जांच के लिए भेजा गया था। कैडर से पोडित दो कर्मचारियों का इलाज किया गया तथा चिकित्सा व्यय के रूप में 2140 रु. तथा निर्बाह भत्ते के रूप में 113 रु. की राशि की प्रतिपूर्ति की गई थी। मानसिक रोगों से पोडित दो खनिकों का इलाज किया गया तथा रोगियों को चिकित्सा व्यय के रूप में 1511 रु. की राशि की प्रतिपूर्ति की गई। इस योजना के अश्वेत चरमों की खरीद के लिए दो रोगियों को 100 रु. की प्रतिपूर्ति की गई। शान्त और गंवार दुर्घटना लाभ योजना के अश्वेत, 9 कर्मचारियों को लाभ मिला तथा उन्हें 10,268 रु. की राशि दी गई। निधि के अंतर्गत लाभान्वीतियों के लिए सार्वजनिक अस्पतालों में 5 पलंग आरक्षित किए गए थे। 41 खान-अयस्क खानों को अपने अस्पतालों, शोधालयों, प्रसूति केन्द्रों आदि की व्यवस्था करने के लिए 1674198 रु. की राशि सहायता अनुदान के रूप में दी गई। खान प्रबंधन के अश्वेत को अस्पताल उपकरण खरीदने के लिए 374,806 रु. की राशि की मंजूरी दी गई। छह खान-अयस्क खानों को एम्बुलेंस वैन की खरीद के लिए 3,55,000 रु. सहायता अनुदान के रूप में दिए गए थे।

(2) आवास सुविधाएं :

निधि के कार्यकलापों में एक कार्यकलाप खनिकों के लिए खानों की व्यवस्था करना है। इस समय, चार योजनाएं चल रही हैं, अर्थात्:—

(i) टाइप-I आवास योजना,

(ii) टाइप-II आवास योजना,

(iii) अपना मकान स्वयं बनाओ, योजना

(iv) खान और बीडों कर्मचारियों के लिए ग्रुप आवास योजना।

(i) टाइप-I आवास योजना के अन्तर्गत, खान प्रबंधन के मकानों के निर्माण के लिए निर्माण की वास्तविक लागत के 75 प्रतिशत या 10,000 रु., जो भी कम हो, की दर से समदाव हो जाता है। समदाव के अनिवार्य, साधारण मिट्टी वाले क्षेत्रों में 1000 रु. प्रति मकान और काली मिट्टी या उमरी मिट्टी वाले क्षेत्रों में 1500 रु. प्रति मकान या वास्तविक लागत जो भी कम हो, की दर से विकास प्रभार भी दिया है। वित्तीय वर्ष के दौरान, इस योजना के अंतर्गत 42 मकानों के निर्माण हेतु 1988-89 के दौरान 2,49,000 रु. की राशि संभूत की गई थी।

(ii) टाइप-II आवास योजना के अन्तर्गत, खान प्रबन्धकों को मकानों के निर्माण के लिए 20,000/-रु. का निर्माण की वास्तविक लागत के 75% जो भी कम हो, की दर से इमदाद दी जाती है। इसके अतिरिक्त, साधारण मिट्टी वाले क्षेत्रों में 1500/-रु. प्रति मकान और कासी या उमरी मिट्टी वाले क्षेत्रों में 2250/-रु. प्रति मकान विकास की वास्तविक लागत, जो भी कम हो, की दर से विकास प्रभार भी देय है। वर्ष 1988-89 के दौरान मकानों के निर्माण के लिए खान प्रबन्ध-सर्वों को वास्तव में 28,57,800/-रु. की राशि वितरित की गई।

(iii) अपना मकान स्वयं बनाओ योजना के अन्तर्गत किसी पात्र खान कर्मकार को उसके अकेले परिवार के अन्य सदस्यों के स्वामित्वाधीन या सरकार या अन्य किसी एजेंसी द्वारा अधिग्रहित उन्मुक्त मूल्याधिकार या पट्टे पर अधिष्ठित किसी प्लॉट पर मकान के निर्माण के लिए 1000/-रु. को इमदाद तथा 4000/-रु. को ब्याज मुक्त ऋण राशि दी जाती है जो 9 वर्ष से अधिक की अवधि में समान मासिक किस्तों में वसूल की जाती है। उन कर्मकारों को जो छोटा परिवार मानदंड हैं, 1000—रु. की अतिरिक्त इमदाद राशि दी जाती है।

रिपोर्टींग वर्ष के दौरान, इस योजना के अन्तर्गत कर्मकारों को—मकानों के निर्माण के लिए 45,400/-रु. की राशि मंजूर की गई, अपना मकान स्वयं बनाओ योजना के अन्तर्गत पहले मंजूर किए गए ऋण पर मकानों के निर्माण के लिए स्वोक्त ब्याज मुक्त ऋण में से खमियों से 26,024/-रु. की राशि वसूल की गई।

(iv) ग्रुप आवास योजना कर्मकारों को सहकारी ग्रुप आवास समितियां, जिनके कम से कम 50 कर्मकार सदस्य हों, बनाने और अपने स्वयं के साधनों से अपने सदस्यों के लिए भारत सरकार तथा अन्य स्रोतों से अनुपूर्ति मकानों को बनाने के लिए प्रेरित करती है। कल्याण निधि को रोकना रखने के अलावा, सहकारी समिति को अपने वित्तीय संस्थानों या व्यक्तियों के पक्ष में मकानों का दूसरा देहन करने की अनुमति दी जाती है। सरकार 4000/-रु. और 1000/-रु. प्रति मकान की दर से क्रमशः ऋण और इमदाद मंजूर करती है। रिपोर्टींग वर्ष के दौरान, इस योजना के अधीन कोई प्रस्ताव प्राप्त नहीं हुआ था।

3. जल आपूर्ति:—खानों के लिए जल आपूर्ति हेतु निधि, लघु खान मालिकों को (जिनका उत्पादन 3000 मीट्रिक टन प्रति माह से कम है) अपनी जल आपूर्ति योजना और कुएं खोदने की बाबत निर्माण की वास्तविक लागत के 75/- की दर से इमदाद देता है। अन्य खान मालिकों को निर्माण की वास्तविक लागत के 50/- से अधिक की इमदाद दी जाती है। इस वर्ष के दौरान, जल आपूर्ति योजना के अधीन खान प्रबन्धकों को 6,51,848/-रु. की राशि दी गई थी। कुओं को खोदने के लिए 58,850/-रु. की राशि दी गई थी। जल आपूर्ति के छह प्रस्तावों और कुएं खोदने के ग्यारह प्रस्तावों के बारे में प्रशासनिक अनुमोदन दिया गया था।

4. शिक्षा:—छात्रवृत्तियां देने की योजना के अन्तर्गत, खानों के बच्चों को लाभ दिए जाते हैं। रिपोर्टींग वर्ष के दौरान, खान कर्मकारों के 3481 बच्चों को 10,86,811/-रु. की राशि वितरित की गई थी। 2106 बच्चों को स्टेण्डिंग-पुस्तकें आदि दी गई थीं और इस प्रयोजना हेतु 35,910/-रु. की राशि मंजूर की गई। मध्यम शिक्षा योजना के अन्तर्गत 1545 बच्चों को लाभ मिला और इस प्रयोजना हेतु 54,522/-रु. की राशि खर्च की गई थी। स्कूल जाने वाले बच्चों के लिए दो वाहनों की खरीद हेतु 1,50,000/-रु. की राशि सहायता अनुदान के रूप में मंजूर की गई थी। पुस्तकालयों के रख-रखाव के लिए तीन खान प्रबन्धकों को 4765/-रु. की राशि सहायता अनुदान के रूप में मंजूर की गई थी।

5. मनोरंजन:—खान प्रबन्धकों को 10 टा.पो. टैट मंजूर किए गए थे जिसके लिए 90,312/-रु. की राशि खर्च की गई थी। खान

कर्मकारों के मनोरंजन हेतु फिल्म शो दिखाने के लिए 2,96,060/-रु. की राशि खर्च की गई थी।

बेल-कूद, गम्मा, सामाजिक और सांस्कृतिक कार्यक्रमों को आयोजित करने के लिए 1,20,266/-रु. की राशि खर्च की गई थी। खान कर्मकारों के लिए भ्रमण-व-अध्ययन दौरों की व्यवस्था करने के लिए 55,797/-रु. का व्यय किया गया था।

6. अन्य सुविधा:—केन्द्रीय अस्पताल, जोड़ा में दो नेत्र कैंप और तीन परिवार कल्याण कैंप आयोजित किए गए थे। इस निधि के अन्तर्गत उड़ीसा में 10 फीडर ल इरेरी सहित दो केन्द्रीय लाइनेरी स्थापित की गई हैं।

भाग-II

पहली अप्रैल, 1988 को संधोध	-- 4,36,36,550/-रु.
वर्ष 1988-89 के दौरान प्राप्ति	2,86,27,325/-रु.
वर्ष 1988-89 के दौरान व्यय	2,93,89,100/-रु.
31 मार्च, 1989 को अन्त शेष	4,28,64,775/-रु.

भाग-III

वर्ष 1988-89 के दौरान अनुमानित प्राप्ति और व्यय:

1. अनुमानित व्यय	5,53,58,000/-रु.
2. अनुमानित आय	2,95,00,000/-रु.

[नंबर जेड-16016/4/89-कल्याण-2]

जी.डी. भागर, धवर सचिव

New Delhi, the 21st March, 1990

S.O. 1059.—In pursuance of Section 10 of the Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976 (61 of 1976) the Central Government hereby publishes the following report on the activities financed under the Act during the financial year 1988-89 together with a statement of accounts for that year.

PART-I

(a) General : The Iron Ore Mines Labour Welfare Cess Act, 1961, was enacted to provide for levy and collection of cess on Iron Ore for financing of activities to promote the welfare Miners Working in the iron ore mining industry. The Act came into force on 1st October, 1963. The Act was replaced by the Iron Ore Mines Labour Welfare Cess Amendment Act, 1970 (41 of 1970) which was brought into force from 1st October, 1974, and again by the Iron Ore Mines and Manganese Ore Mines Labour Welfare Cess Act, 1976 (55 of 1976) which came into effect from 1st September, 1978 by which workers employed in manganese ore mines were also covered. The last amendments were made as under:—

(i) Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund (Amendment) Act, 1982 (45 of 1982).

(ii) Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess (Amendment) Act, 1982 (44 of 1982).

By the amendment of 1982, cess has been levied and collected on Chrome Ore with effect from 1st July, 1983, in the same manner as is done for Iron Ore and Manganese ore and workers employed in chrome ore mines have also been covered. The Act provides for the levy of cess at a rate not exceeding one Rupee per metric tonne on iron ore, six Rupees per metric tonne on manganese ore and chrome ore exported or internally consumed. The rate of levy of cess on iron ore was increased from 25 paise per metric tonne to 50 paise per metric tonne with effect from 1st July, 1981. The present rate of cess on manganese ore and chrome ore is Rs. 1.00 per metric tonne and Rs. 3.00 per metric tonne respectively. The proceeds of the cess are utilised mainly for improvement

of public health and sanitation, prevention of diseases and improvement of housing, etc. The welfare facilities are extended to workers employed directly or through contractors.

The cess is levied as a duty of custom on the iron Ore, manganese ore and chrome ore exported and as a duty of excise on the ore consumed internally. The Welfare Commissioners have also been declared as Cess Commissioners and their jurisdiction has been notified for the purpose of collection of cess on internal consumption. The collection of welfare cess as a custom duty is made by the Department of Revenue who are paid one percent of the proceeds as collection charges.

Welfare Activities : The welfare activities under different heads which were financed during the year 1988-89 from the Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund are indicated below.

1. **Medical Facilities :** The workers and their dependants who are getting a basic pay upto Rs. 1600 were provided medical aid by the Labour Welfare Fund Organisation. Facilities were made available to the workers and their dependants in the 5 Central hospitals (one each in Bihar, Orissa, Madhya Pradesh, Karnataka and Goa) and 21 Dispensaries/Primary Health Centres and 1 Maternity-cum-Child Welfare Centre established under the Fund Organisation. During the year the total attendance in Dispensaries/Primary Health Centre was 256391. The attendance in O.P.D. at the hospitals was 112730 while the number of patients treated indoors was 45,190. A sum of Rs. 2324673 was spent on purchase of medicines at the dispensaries and hospitals 10 beds for workers suffering from T.B. reserved and Rs. 4437 has been paid as subsistence allowance to their dependants under the Scheme for Reservation of Beds in T.B. Hospitals. 39 T.B. patients were provided relief under the Scheme for Domestic treatment of miners suffering from T.B. and a sum of Rs. 545 was given as subsistence allowance to their dependants. Under the Leprosy Relief Scheme 1 patient was referred for check up. Two workers suffering from Cancer were treated and a sum of Rs. 2140 as medical charges and Rs. 113 as subsistence allowance was reimbursed to them. Two miners suffering from mental diseases were treated and a sum of Rs. 1511 was reimbursed as medical charges to the patients. 2 patients were reimbursed Rs. 100 under the scheme for purchase of spectacles. Under the Fatal & Serious Accident Benefit Scheme 9 workers received benefits and an amount of Rs. 10,268 was reimbursed to them. 5 beds were reserved in public hospitals, for beneficiaries under the Fund. 41 Mine-Managements were paid Rs. 1674198 as grant-in-aid for managing their own hospitals, dispensaries, maternity centres etc. A sum of Rs. 3,74,806 was sanctioned to mine managements for purchasing Hospitals Equipment.

6 Mine-managements were paid Rs. 3,55,000 as grant-in-aid for purchasing ambulance vans.

2. **Housing Facilities:**—Improvement in provision of housing accommodation for miners is one of the activities of the Fund. Presently there are four Schemes in vogue namely:—

- (i) Type-I House Scheme;
- (ii) Type-II Housing Scheme;
- (iii) Build Your Own House Scheme;
- (iv) Group Housing Scheme for mine and beedi workers;

(i) Under the Type-I Housing Scheme, subsidy is payable to mine managements for construction of houses at the rate of 75% of actual cost of construction or Rs. 10,000 whichever is less. In addition to the subsidy development charges are also payable at the rate of Rs. 1000 per tenement in respect of ordinary soil areas and Rs. 1500 for black cotton or swelly soil areas or the actual cost whichever is less. During the financial year a sum of Rs. 249,000 was sanctioned for construction of 42 houses under this scheme during 1988-89.

(ii) Under the Type-II Housing Scheme subsidy is paid to mine-managements for construction of houses at the rate of Rs. 20,000 or 75% of actual cost of construction whichever is less. In addition, development charges are also payable at the rate of Rs. 1500 per house for ordinary soil areas and Rs. 2250 in respect of black cotton or swelly soil area or the actual cost of development, whichever is less. A sum of Rs. 28,57,800 was actually disbursed to mine-managements for construction of houses during the year 1988-89.

(iii) Under the Build Your Own House Scheme financial assistance of Rs. 1000 as subsidy and an interest free loan of Rs. 4000 recoverable in equal monthly instalments spread over a period not exceeding 9 years is paid to an eligible mine worker for construction of a house on a plot owned by him/her individually or jointly with other members of the family or acquired/allotted by the Government or any other agency on free hold or lease hold basis. An additional subsidy of Rs. 1000 is payable to those workers who adopt family norms.

A sum of Rs. 45,400 was sanctioned for construction of houses to workers under this scheme during the year under report. A sum of Rs. 26,024 was recovered from the miners against the interest free loan sanctioned for the construction of houses on loans sanctioned earlier under Build Your Own House Scheme.

(iv) The Group Housing Scheme encourages workers to form cooperative Group Housing Societies of at least 50 workers and build tenements for their members with their own resources supplemented by Government of India and other sources. In addition to mortgage to the Welfare Fund the Cooperative Society is allowed to negotiate a second mortgage of tenements in favour of other Financial Institutions or persons. The Government sanctions loan and subsidy at the rate of Rs. 4000 and Rs. 1,000 per house respectively. During the year under report no proposal was received under this scheme.

3. **Water Supply :**—For water supply to the miners Fund gives subsidy to the small mine owners (whose production is less than 3,000 metric tonnes per month) at the rate of 75% of the actual cost of construction towards their water supply schemes and sinking of wells. The other mine owners are paid subsidy not exceeding 50% of the actual cost of construction. During the year a sum of Rs. 6,51,848 was paid to mine managements under the water supply scheme. A sum of Rs. 58,850 was paid for sinking of wells. Administrative approval was given in case of six proposals of water supply and eleven proposals for making of wells.

4. **Education :** Under the Scheme for the award of Scholarships benefits are provided towards of miners. A sum of Rs. 10,86,811 was distributed to 3481 children of mine workers during the year under reports. 2106 children were provided slates/books etc. and a sum of Rs. 35,910 was sanctioned for this purpose. 1545 children benefitted under the Mid-day meal Scheme and a sum of Rs. 54,522 was spent for purpose. A sum of Rs. 1,50,000 was sanctioned as grant-in-aid for purchasing 2 vehicles for School going children. For maintaining libraries a sum of Rs. 4765 was sanctioned as grant-in-aid to 3 mine managements.

5. **Recreation :** 10 T.V. Sets were sanctioned to mine managements for which a sum of Rs. 90,312 was spent. A sum of Rs. 2,96,060 was spent on exhibition of film/shows for recreation of mine workers.

For organising sports, games, social and cultural activities a sum of Rs. 1,20,266 was spent. An expenditure of Rs. 55,797 was incurred for arranging excursion-cum-study tours for mine workers.

6. **Other Information :** Two eye camps and three family welfare camps were organised at Central Hospital Joda. Two Central Libraries with 10 Feeder libraries have been set up under the Fund in Orissa.

PART—II

Opening balance as on 1st April, 1988 Rs. 4,36,26,550
 Receipt during the year 1988-89 Rs. 2,86,27,325
 Expenditure during the year 1988-89 Rs. 2,93,89,100
 Closing Balance as on 31-3-1989 Rs. 4,28,64,775

PART—III

Estimated Receipt and Expenditure for the year 1988-89,
 1. Estimated Expenditure Rs. 5,53,50,000
 2. Estimated Receipt Rs. 2,95,60,000

[No. Z-16016/4/89-W.II]
 V. D. NAGAR, Under Secy.

नई दिल्ली, 7 मार्च, 1990

ANNEXURE

का.आ. 1060:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सरस्वती को-ऑपरेटिव बैंक लि. के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, बंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक, अधिकरण बल्लई के पंचवट को प्रकाशित करती है।

New Delhi, the 7th March, 1990

S.O. 1060.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bombay as shown in the annexure, in the industrial dispute between the employer in relation to the management of Saraswat Co-op. Bank Ltd. and their workman

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I AT BOMBAY

(PRESIDING OFFICER : JUSTICE S. N. KHATRI)

Reference No. CGIT-61 of 1989

PARTIES :

Employer in relation to the management of Saraswat Co-operative Bank Limited.

AND

Their Workmen

APPEARANCES :

For the Management—Shri Hardikar

For the Workmen—Shri A. P. Kulkarni, Advocate.

INDUSTRY : Banking

STATE : Maharashtra

Bombay, dated the 15th day of February, 1990

AWARD

The Central Government has referred the following Industrial Dispute to this Tribunal under section 10(1)(d) of the Industrial Disputes Act for adjudication.

“Whether the action of the management of the Saraswat Co-operative Bank Limited in assigning the post of Senior Clerk to Mrs. S. S. Manjrekar Stenographer on continued basis is justified? If not, to what relief the workmen concerned are entitled?”

2. Both sides have been duly served and they have put in appearance on three dates. On 15th February, 1990 a memo is held on behalf of the workmen that he did not wish to prosecute the reference. In these circumstances in absence of any materials, I hold that the action of the management is not shown to be unjustified. As a result, the further question of granting any relief to the workmen does not arise. Award accordingly. No orders as to costs.

S. N. KHATRI, Presiding Officer
[No. L-12011/26/89-IR Bank-I]

का.आ. 1061:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार धनलक्ष्मी बैंक लि., त्रिचूर, के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में अम. न्यायालय, क्विलॉन के पंचवट को प्रकाशित करती है।

S.O. 1061.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Labour Court, Quilon as shown in the annexure, in the industrial dispute between the employers in relation to the management of Dhanalakshi Bank Ltd. and their workman.

IN THE CENTRAL GOVERNMENT LABOUR COURT, QUILON

PRESENT :

Shri D. Velayudhan Nair, B.Sc., B.L., Presiding Officer.

Monday the 6th day of November, 1989

Industrial Dispute No. 1/89(C)

BETWEEN

The Chairman, Dhanalakshmi Bank Ltd., Central Office, P.B. No. 9, Round, Trichur-680001.

... Management

AND

Shri V. K. Vijayan Pillai, Kattuvallil House, Kanichukulangara P.O. Shertallai-688544.

Workman

REPRESENTATIONS :

(1) S/Sri B. S. Krishnan and M. N. Radhakrishna Menon, Advocates, Ernakulam.

... For the management.

(2) S/Sri Kadavoor K. Sivadasan and G. Sethunathan Pillai, Advocates, Quilon.

... For the workman.

AWARD

The workman in this case Sri Vijayan Pillai, Clerk of the management Bank was dismissed from service for serious misconducts proved in a properly held domestic enquiry. The validity of the enquiry and the findings were challenged by the worker. So that question was heard as a preliminary point. For that purpose the enquiry officer was examined as MW1 and Ext. M1 and M2 were marked. By the order dated 26-8-1989 I held the enquiry valid and proper. The findings recorded by the enquiry officer were accepted by me. The order runs as :—

“This Industrial Dispute between the Chairman, Dhanalakshmi Bank Ltd., Central Office, P.B. No. 9, Round, Trichur-680001 and the workman of the above concern Sri V. K. Vijayan Pillai, Kattuvallil House, Kanichukulangara P.O. Shertallai-688544 was referred to this court for adjudication by the Government of India under Section 10(1)(c) of the Industrial Disputes Act 1947 as per Government order No. L-12012/740/88-D. II(A) dated 02 January 1989.

The issue referred is : “Whether the action of the management of Dhanalakshmi Bank Ltd., Trichur in dismissing the services of Sri V. K. Vijayan Pillai as a Clerk with effect from 24-10-86 is justified? If not, to what relief is the workman concerned entitled?”

(2) The worker filed a statement of claim raising the following allegations. While working as a clerk

under the opposite party he was suspended on 10-1-1985. Memo of charges was issued on 22-5-85. The allegations levelled were baseless and false. He submitted his explanation denying the same. Ignoring the same a domestic enquiry was held. On the basis of the report filed by the enquiry Officer he was dismissed from service on 24-10-86 with retrospective effect from the date of suspension. The enquiry was held violating all principles of natural justice. Enquiry was not conducted in his presence. Statements of witnesses were not recorded in his presence. The enquiry officer copied the statements handed over to him by the presenting officer. The worker was not given any opportunity to cross examine the witnesses. He was not allowed to let in evidence. Copies of the documents were not made available to him. The enquiry held is therefore not valid. The enquiry officer was biased and prejudiced against the worker. The findings recorded are not based on legal evidence produced in the enquiry. The witnesses examined in the enquiry had extracted a statement from the worker using undue influence and coercion. This was made use in the enquiry. The objection of the worker was not considered by the enquiry officer. On the basis of the very same allegation criminal proceedings were initiated against him. The police investigated the case and found the charges baseless and false and so filed a refer report. The same was accepted by the Magistrates Court. This amounts to acquittal. The charges said to have been proved in the enquiry will not amount to major misconduct warranting dismissal. The punishment of dismissal is too harsh. Since the enquiry is improper and invalid and since the findings are not based on evidence the report and the findings have to be set aside. The order of dismissal based on such a report has to be set aside. The worker is entitled to be reinstated with all backwages and other service benefits. It is prayed that an award may be passed accordingly.

(3) The management contends as below. In contemplation of the disciplinary proceedings the worker was suspended on 10-1-85. He was chargesheeted by the memo dated 22-5-85. The misconducts were committed by him while he was working in Vaikom branch. He submitted his explanation denying the charges. Since the same was not satisfactory, a domestic enquiry was held by the manager of Chairman's Secretariat in accordance with the principles of natural justice. List of witnesses and list of documents were given to the worker in advance. The documents were made available for the perusal of the worker. Witnesses were examined in his presence. The worker did not choose to cross examine some of them. The documents were marked in his presence. He did not object. He fully participated in the enquiry and as a token had put his signature in the enquiry proceedings. It is incorrect to say that enquiry officer had copied the statements given by the presenting officer. The worker was given opportunity to lead evidence. He gave his statement to the enquiry officer. It can therefore be seen that the enquiry was held in tune with the principles of natural justice and fair play. The enquiry is valid. The same is not liable to be set aside. The enquiry officer was not biased or prejudiced as alleged. He was a senior officer of the bank. There was nothing improper in

appointing him as the enquiry officer. His findings are based on legal evidence let in the enquiry. The witnesses stated in the claim statement had investigated the misconducts of the worker. He had given a statement to them. The same was not extracted as alleged using undue influence or coercion. There was no necessity for the same. The worker did not object to the marking of the statement and other documents. The scope of a domestic enquiry is different from enquiry in criminal proceedings and enquiry in disciplinary proceedings. The two are independent proceedings. The result of a criminal proceedings will not affect the disciplinary proceedings. The charges proved are grave ones warranting dismissal. The order of dismissal is not too harsh as alleged. No mitigating circumstances were there so as to show leniency. The enquiry held is valid and proper. The findings are based on evidence produced in the enquiry. The report and findings are not liable to be set aside. In case if it is found that the enquiry held is improper and invalid it is prayed that the management may be permitted to lead fresh evidence to prove the charges. The worker is not entitled to reinstatement with or without backwages and other service benefits. He is not entitled to any relief. It is prayed that an award may be passed upholding the dismissal.

(4) The worker filed a replication denying the case of the management and reiterating the allegations made in the claim statement.

(5) The point for determination at this stage is :—

“Whether the enquiry held is valid and proper and whether the findings of the enquiry officer are based on legal evidence produced in the enquiry?”

(6) The enquiry officer was examined as MW1 and Ext. M1 and M2 were marked.

(7) The point.—The first attack on the enquiry is that the standing orders of the bank were not produced and marked in the enquiry and the charges were not framed with reference to the provisions in the standing orders and so the enquiry has to be quashed. It is true that the standing orders were not produced in the enquiry or in this court. The worker has no such case in the claim statement. He had not pleaded any such case before the enquiry officer. As such it is not open to him to advance such an argument now. He has no case that the misconducts alleged will not come under any of the provision of the standing orders. His only case is that charges were not framed with reference to the provisions in the standing orders. I see no merit in this argument.

(8) It is contended that the enquiry was held violating all principles of natural justice and so invalid. This case is also liable to be rejected. He has no case that he was not given list of documents and list of witnesses. His case is that copies of documents were not made available to him. But it may be noted that he was informed that he can peruse the documents on any working day during office hours at Trichur Central Office after fixing

up prior appointment with the presenting officer and the travelling expenses for the same will be paid by the management. If he had not availed that opportunity he cannot complain about it now.

(9) The worker has no case that he did not attend the enquiry. But what is stated is that the witnesses were not examined in his presence. The statements of witnesses were given to the enquiry officer and he copied the same and got signed by the parties. This is denied by the enquiry officer as MW1. (Page 4). It is clearly stated by him that the witnesses were examined by the presenting officer and he (the enquiry officer) recorded the statements. There is no evidence to the contrary as there cannot be any. Ext. M2 is the book containing the enquiry proceedings and statements of witnesses. The enquiry commenced on 21-8-85. Since the delinquent was absent on that day the enquiry was adjourned to 6-9-85. On that day the enquiry officer read out the charges and the delinquent denied the same. He had stated that he has no document to produce and no witnesses to examine. He had signed the proceedings (page 3 of Ext. M2). He cannot turn round and say now that he was not allowed to lead evidence. It is true that he had not signed the statements of witnesses examined by the management. Taking advantage of this he now says that the statements given by the presenting officer were copied by the enquiry officer and all the three signed. I have stated above that MW1 had denied this case of the worker. The worker had cross examined witness No. 1. Even that statement is not signed by him. These facts show that what is stated by him now is not true. Witnesses Nos. 2 to 5 were not cross examined by him. Nothing prevented him from cross examining those witnesses. It has therefore to be said that there is no substance in the contention of the worker that evidence was not recorded in his presence.

(10) Another case of the worker is that the documents were not properly proved. The persons concerned were not examined. The documents were marked violating the provisions of the evidence Act. This case is also liable to be rejected. It is well settled proposition of law that Rules of evidence are not applicable to domestic enquiry. (1982 1 LLJ 46). It was further held in the decision cited that there is no allergy to hear say evidence provided it has reasonable nexus and credibility. The enquiry in the instant case was held with notice to the delinquent. He participated in the enquiry. Evidence was recorded in his presence. He was given opportunity to let in evidence in defence. The enquiry held is therefore found to be proper and valid. The first part of the point answered as above.

(11) Now remains the question whether the findings recorded by the enquiry officer are based on evidence produced in the enquiry. The charges are :—

- (i) That he fraudulently and misusing his position as a Clerk of the Bank managed to get two IRDP loans amounting to Rs. 4000 and Rs. 3000 respectively to Smt. K. Maya materially suppressing the fact that Smt. Maya was his wife and fully

knowing that she was not entitled for the benefit under IRD Programme. The proceeds of the loans were not utilised for the purpose stated in the loan application and sanction ticket.

- (ii) That the proceeds of the loan amount were utilised by him and the security documents were also executed by him forging the signature of Smt. K. Maya, his wife, dishonestly to raise unlawful gains.
- (iii) That he unauthorisedly raised a deposit loan of Rs. 1500 (PN 32/82 dt. 26-2-1982) by charging DC receipt No. 62/82 for Rs. 2000 standing in the name of Smt. K. Kamalakshy Amma and himself as E or S Deposit without the consent of Smt. K. Kamalakshy Amma. He had also executed security documents individually violating the Central Office directions and regulations.
- (iv) That he had in collusion with Sri Ramesh Pai, Manager of the Branch, Sri E. U. George, Assistant Manager of the Branch, had opened and operated two fictitious Current Accounts in the name of (i) M/s. Manipadam Agencies and contractors and (2) M/s. Blue Star Agency with ulterior motives.
- (v) That his above said dishonest acts were highly prejudicial and detrimental to the interests of the Bank and were also subversive of its discipline.

(12) In Ext. M 31-V marked in the enquiry the delinquent admits charges 1 to 4. It is a letter (inland letter card) written to the disciplinary authority. No undue influence or coercion can be pleaded with regard to this letter.

(13) In Ext. M2 marked in this court (page 30) the delinquent when examined admits the guilt and prays for taking a lenient view. The guilt is admitted by him in the letters dated 10-10-85 and 1-6-88 addressed to the Chairman of the Bank and he pleaded for mercy. These letters are in Ext. M1 file. No undue influence or coercion can be pleaded with regard to these two letters.

(14) The fact that Smt. K. Maya is the wife of the worker is not disputed. But that is argued now is that at the relevant time he was not maintaining her. They were living separately and so her income will not exceed Rs. 3500 a year and she was therefore entitled to the benefits of the IRP Scheme. This case does not find a place in the claim statement. There is no evidence as well to prove this case. In the absence of such evidence it has to be said that Maya was not entitled to the benefit of the scheme. The fact that the delinquent was the husband of Maya was not shown in Ext. M1 V and M4 V application forms. Instead the name of her father was shown. After the marriage of Maya with the delinquent the proper course was to show the name of her husband in the application forms, and not that of her father. In Ext. M9 V the delinquent admits that he had put the signature of Maya in the concerned documents. It is

further admitted that the loans were not availed for the purposes the same were sanctioned. The delinquent as an officer of the bank succeeded in getting the loans sanctioned. The loan amounts were not utilised for the purpose the same were sanctioned. The delinquent is guilty of charge 1 and 2. The enquiry officer also found so. A different finding is not possible.

(15) Charge No. 3 is that he had unauthorisedly raised a deposit loan of Rs. 1500 by charging DC DC receipt for Rs. 2000 standing in the name of one Kamalakshi Amma and himself without her consent and himself executed the security documents and thus violated the central office directions and regulations. As stated by me earlier in the letter dated 1-6-88 what is stated is that the charges levelled against him were not done with intention. What is stated in the letter dated 10-12-85 is that he is fully aware of the seriousness of the charges levelled against him. He prayed for mercy. He apologised for what had happened and he assured not to repeat such mistakes in future. In the letter dated 27-5-85 (Ext. M-31 V in the enquiry) this charge is admitted by him. What is stated is that he did so without understanding the implications of his action at that time. These letters were written by him voluntarily. And not because of any undue influence or coercion.

(16) For raising a deposit loan on the security of the DC DC receipt standing in the names of two or more persons all should apply and the necessary documents should be executed by all. In the instant case it is not so. Ext. M-10-V marked in the enquiry is the loan application. There the beneficiary of the DC DC is stated as the delinquent alone. The fact that Kamalakshi Amma was also the beneficiary was suppressed. The relative promissory note is Ext. M-11 V. The debit voucher is Ext. M14 V. All these documents are signed by the delinquent alone. Ext. M13 V is the photo copy of the DC DC. It is in favour of Kamalakshi Amma and the delinquent. On the reverse of it Kamalakshmi Amma had signed. That signature amounts to receipt of the amount on discharge. The amount, date etc. are not in this document. It cannot be argued that this signature evidences taking of the loan of Rs. 1500. It cannot therefore be argued that she had consented to the taking of the loan. In these circumstances it has to be said that charge No. 3 is also proved.

(17) Charge No. 4 is that the delinquent in collusion with the Manager and Assistant Manager had opened and operated two fictitious current accounts in the names of (1) M/s Manipadam Agencies and contractors and (2) M/s. Blue Star Agency. Charge No. 5 is included in charge No. 4 in the sense that the said acts of the delinquent were prejudicial and detrimental to the interests of the bank and also subversive of its discipline. According to him he had opened the accounts at the instruction of the Manager not knowing the fictitious nature of the accounts. But the charge is admitted by him in Ext. M9 V marked in the enquiry. The evidence on record also shows that the two were fictitious ones. (See Ext. M-17 V, 18 V and 28 V) The further evidence shows that the loan for the purchase of the pumpset was got sanctioned in the name of his wife and deposited in the account of M/s Manipadam Agencies and then with-

drawn. The same is the case regarding Blue Star Agency. The delinquent was a consenting party to these transactions. The charges are proved. The enquiry officer also found so. This cannot be said to be perverse.

(18) It was argued on behalf of the worker that the suspension prior to charges was illegal which shows the predetermination of the management to punish the employee. We are not at this question now. Punishment will be imposed if the charges are proved. That aspect will be considered by this court and if the charges are seen proved the punishment will be upheld; if not the same will be set aside. As such the question of predetermination of the management to punish the employee does not at all arise.

(19) Another case of the worker is that on the same set of facts criminal proceedings were initiated against him and the allegations were not found to be true on investigation by the police and the same has to be accepted and he has to be found not guilty. I am unable to accept this case of the worker. The scope of domestic enquiry is different from the scope of investigation in criminal cases. In criminal cases the guilt has to be proved beyond reasonable doubt. It is not so in domestic enquiry proceedings where preponderance of probabilities of guilt also are looked into. Even hearsay evidence is admissible in domestic enquiry provided it has reasonable nexus and credibility. It is well settled law that the findings of criminal courts are not binding on other courts. Apart from this there is no evidence to show that the case was referred by the police and the same was accepted by the Magistrate's Court. Even if accepted, as stated by me above, the same is not binding on this court.

(20) To say in short the enquiry was held in tune with the principles of natural justice. The findings recorded by the enquiry officer are based on legal evidence let in the enquiry. I find so.

"The enquiry report and the findings are therefore accepted."

(2) The case was then adjourned for evidence and hearing on the question of punishment. The worker was examined as WW1 and Ext. W1 to 3 and Ext. M3 were marked.

(3) The point for determination is :—

"Whether the punishment imposed is justified ?"

(4) The point. The learned counsel for the worker referring to the decision reported in 1973 1 LLJ 278 (Firestone case) and 1983 LIC 1939 had stated that the evidence on record, including the evidence produced in the domestic enquiry, has to be reappraised for taking a decision on the question of punishment. There is no dispute regarding this. The evidence let in the enquiry has also to be taken into consideration in deciding the question of punishment. In the decision cited first it has also been held that for interfering with the view taken by the management on the question of punishment based on the enquiry and report and finding recorded by the enquiry officer very cogent reasons have to be stated. I had already found that the enquiry held is valid and proper. I

had also held that the finding recorded by the enquiry officer is correct. As such we have to see whether there are cogent and valid reasons for not accepting the views of the management.

(5) The charges levelled against the worker are :—

- (i) That he fraudulently and misusing his position as a clerk of the bank managed to get two IRDP loans amounting to Rs. 4000 and Rs. 3000 respectively to Smt. K. Maya materially suppressing the fact that Smt. Maya was his wife and fully knowing that she was not entitled for the benefit under IRD programme. The proceeds of the loans were not utilised for the purpose stated in the loan application and sanction ticket.
- (ii) that the proceeds of the loan amount were utilised by him and the security documents were also executed by him forging the signature of Smt. K. Maya, his wife, dishonestly to raise unlawful gains.
- (iii) that he unauthorisedly raised a deposit loan of Rs. 1500 PN 32/82 dated 26-2-1982 by charging DC DC receipt No. 62/81 for Rs. 2000 standing in the name of Smt. K. Kamalakshy Amma and himself as E or S Deposit without the consent of Smt. K. Kamalakshy Amma. He had also executed security documents individually violating the Central Office directions and regulations.
- (iv) that he had in collusion with Sri Ramesh Pail, Manager of the Branch, Sri E. U. George Assistant Manager of the Branch, had opened and operated two fictitious Current Accounts in the name of (1) M/s Manipadam Agencies and Contractors and (2) M/s. Blue Star Agency with ulterior motives.
- (v) That his above said dishonest acts were highly prejudicial and detrimental to the interests of the Bank and were also subversive of its discipline.

(6) The worker had admitted charges (i) to (iv) in Ext. M31-V and Ext. M9-V marked in the enquiry and in Ext. M2 marked in this court. As against this he deposes as WW1. Regarding Ext. M9-V marked in the enquiry the case of the worker in the claim statement is that the witnesses examined in the enquiry viz, M/s. Sasikumar, Krishnamoorthy and Ravikumar had extracted the statement using undue influence, coercion and fraud. The statement was dictated by them. But as WW1 (page 4 & 5) he says that the statement was given to the chairman of the bank at Trichur Head Office.

(7) Ext. M3 is the memorandum of appeal filed by the worker. He admitted his signature in Ext. M3. There is his signature in Ext. M2 enquiry proceedings. There is his signature in the deposition when he was examined as WW1. He denies his signature in Ext. M31-V marked in the enquiry. A comparison of

his signature in Ext. M2, M3 and in the deposition with that in Ext. M31-V shows that there is no difference. This shows that the WW1 states regarding his signature in Ext. M31-V is not true.

8) In the following letters which are in Ext. M1 file the worker admits his guilt. In the representation dated 1-6-1988 what he stated is that the charges levelled against him were not committed with intention. He prays for mercy. In the letter dated 10-12-1985 which is the reply for the show cause notice regarding punishment what he states is that he is fully aware of the seriousness of the charges levelled against him and he prays for mercy. He had apologised for what had happened and he assured that the misconducts will not be repeated in future. As stated in para 6 and 7 above there is Ext. M31-V and M9V where he had admitted his guilt. All these go to show that he is guilty of the charges levelled against him.

(9) Now the question is whether dismissal was justified. The case of the worker is one of total denial. This is found to be not true. The misconducts proved are serious ones. There is no reason to take a lenient view. I am therefore not inclined to interfere in the punishment imposed by the management. The punishment meted out is justified. I find so.

I therefore pass an award unholding the dismissal of Sri V. K. Vijayan Pillai.

D. VELAYUDHAN NAIR, Presiding Officer

[No. L-12012/740/88-D.II(A)/IRB-I]

PADMA VENKATACHALAM, Dy. Secy.

APPENDIX

Witness examined on the side of the management

MW1. A. S. Ramakrishnan

Exhibits marked on the side of the management.

Ext. M1. Enquiry report.

Ext. M2. Enquiry proceedings.

Ext. M3. Statement of facts.

Witness examined on the side of the workman

WW1. V. K. Vijayan Pillai.

Exhibits marked on the side of the workman

Ext. W1. Photostat copy of Terms & Conditions.

Ext. M2. Letter No. PD/14973/82 dated 15th May 1982 from the Chief Executive Officer, The Dhanalakshmi Bank Ltd. addressed to Sri V. K. Vijayan Pillai, clerk, Dhanalakshmi Bank Limited Vaikom Branch.

Ext. W3. Certificate issued by the Chairman, The Dhanalakshmi Bank Ltd. Regd. Office, Trichur.

D. VELAYUDHAN NAIR, Presiding Officer

नई दिल्ली, 15 मार्च, 1990

का.अ. 1063-—केन्द्रीय सरकार, औद्योगिक नियोजन (स्थायी प्रादेश) अधिनियम, 1946 (1946 का 20) की धारा 2 के खण्ड (क) द्वारा प्रवर्णन शक्तियों का प्रयोग करते हुए, औद्योगिक सरकार के

धम भ्रमणन की अधिगूजन संवत्ता का.अ. 3042 तारीख 21 नितम्बर 1988 को अधिगत करले हुए, निम्नलिखित अधिकारियों को भारत में कहीं भी स्थित केन्द्रीय सरकार या केन प्रशासन के नियंत्रण, अधिन अधीनस्थ स्थापनों या किनो प्रमुख पत्ता, प्लान या वेव क्षेत्र के संबंध में उक्त अधिनियम के अर्धन अर्धन प्राधिकारियों के कृत्यों का प्रयोग करने के लिए नियुक्त करने हैं, अर्थात्:-

1. मुख्य अम आयुक्त (केन्द्रीय)
2. संयुक्त मुख्य अम आयुक्त (केन्द्रीय)
3. सभी उप मुख्य अम आयुक्त (केन्द्रीय)

2. उक्त अधिनियम के अर्धन सभ, अर्थात् मुख्य अम आयुक्त (केन्द्रीय) को संवर्धन का अर्धन जो अर्धनों को उक्त अर्धन प्राधिकारियों में से किनो का अधिनियम करने :-

परन्तु यह कि प्रमाणन अधिकारों के रूप में उप मुख्य अम आयुक्त (केन्द्रीय) के प्रमाणन के अर्धनों के विषय अर्धनों यथास्थिति, केवल मुख्य अम आयुक्त (केन्द्रीय) या संयुक्त मुख्य अम आयुक्त (केन्द्रीय) द्वारा भुक्त अर्धन।

[का. न. एन. 11025/3/86-त.एल.एल.डी/सं.एल.एल.डी-1 अम
अ.र. के. दाम अवर सचिव]

New Delhi, the 15th March, 1990

S.O. 1062.—In exercise of the powers conferred by clause (a) of section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946) and in supersession of the notification of the Government of India in the Ministry of Labour No. S.O. 3042, dated the 21st September, 1988, the Central Government hereby appoints the following officers to exercise the functions of Appellate Authorities under the said Act in respect of the industrial establishments under the control of the Central Government or a railway administration or a major port, mine or oilfield, situated any where in India, namely :—

- (1) The Chief Labour Commissioner (Central).
- (2) The Joint Chief Labour Commissioner (Central).
- (3) All Deputy Chief Labour Commissioners (Central).

2. All the appeals under the said Act will be addressed to the Chief Labour Commissioner (Central), who will allocate the appeals to any of the said Appellate Authorities.

Provided that appeals against the orders of certification of any Deputy Chief Labour Commissioner (Central) as Certifying Officer will be heard only by the Chief Labour Commissioner (Central) or the Joint Chief Labour Commissioner (Central), as the case may be.

[F. No. S-11025/3/86-CLT/CLS-I/Coord.]
R. K. DAS, Under Secy.

नई दिल्ली, 20 मार्च, 1990

का. अ. 1063—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अधुर्माण में केन्द्रीय सरकार बैंक आफ मद्रास लि. के अर्धन के नवम्बर निम्नलिखित अर्धन उक्त अर्धनों के बीच, अर्धन में निम्नलिखित औद्योगिक विवाद में औद्योगिक अधिनियम, सभा के पंचवत्ता का अधिनियम करने हैं।

New Delhi, the 20th March, 1990

S.O. 1063.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the annexure, in the industrial dispute between the employer in relation to the management of Bank of Madura Ltd. and their workman.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU, MADRAS

Saturday, the 16th day of September 1989

PRESENT :

Thiru K. Natarajan, M.A., B.L.,
Industrial Tribunal

Industrial Dispute No 68 of 1986

(in the matter of dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workman and the Management of Bank of Madura Ltd., Madurai).

BETWEEN

Shri S. T. Sankara Subramanian, S/o Shri S.P. Thirumoolanathan, 7-21, South Street, Thiruvallangadu-609 810, Thanjavur Dist. (Tamil Nadu).

AND

The Chief Officer, Bank of Madura Ltd., 33, North Chitrai Street, Madurai-625 001.

REFERENCE :

Order No. L-12012/145/85-D.IV(A), dt. 1-10-1986 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru S. Vaidyanathan for Tvl. Row & Reddy and V. Parthiban, Advocates appearing for the workman and of Thiru S. Jayaraman, Advocate for the management and this dispute having stood over till this day for consideration, this Tribunal made the following :

AWARD

This dispute between the workman and the Management of Bank of Madura Ltd., Madurai arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-12012/145/85-D.IV(A), dated 1-10-1986 of the Ministry of Labour for adjudication of the following issue :

"Whether the action of the management of Bank of Madurai Limited, Central Office, 758, Anna Salai, Madras in terminating the services of the workmen Shri S. T. Sankara Subramanian with effect from 9-9-1975 is

justified? If not, to what relief the said workman is entitled?"

2. The claim petition averments are that the Petitioner was appointed on 20-8-1974 by the Respondent-Bank as an Assistant in the Chit Fund Department of the Bank at Madurai on a contract for a period of six months on a consolidated salary of Rs. 150 per month. One of the conditions was that on the expiry of the contract period, the Bank reserved the right to terminate his services without notice. On 14-2-1975 the Petitioner received an order that he was terminated on 22-2-1975 on the expiry of the contract. He was doing the job in regular nature and his functions could in no way called temporary. He was given another appointment order on 5-3-75 on the same terms and conditions. Again an order of termination was passed on 29-8-1975 terminating the services of the Petitioner with effect from 9-9-75. The Petitioner had worked for 360 days until his termination. He had continuously worked for more than 240 days in a 12 calendar months preceding 9-9-75. Hence he fulfilled the requirements of the continuous service. The Petitioner could not be terminated without following the procedure prescribed in Section 25-F of the Act. The job performed by the Petitioner continued to be there in the Respondent-Bank, he requested the Bank by his letter to take him in service but of no avail. The Bank re-employed three other persons namely Muthuramalingam, Karupiah and Govindaraj, who were appointed as Assistants in the same manner as he was appointed and whose services were also terminated like that of the Petitioner. Those persons were juniors to the Petitioner. Hence he made a representation for regular absorption into the Bank's services on 27-12-1984. The conciliation ended in failure. The action of the Bank in terminating the services of the Petitioner on 9-9-1975 is in violation of Section 25-F of Industrial Disputes Act. The three other persons who were juniors to the Petitioner have been appointed in violation of Section 25-H of the I.D. Act. Hence the claim for reinstatement.

3. The Respondent in its counter statement states that the Petitioner was appointed as Assistant on contract basis for a period of six months on a consolidated salary of Rs. 150; that he can be terminated by giving one month's notice. The Bank also reserved its right to terminate the services of the Petitioner on the expiry of the contract without notice. Accordingly he was terminated on 22-2-75. Again he was appointed for another period of six months by an order dated 5-3-1975 on the same terms and conditions on a consolidated rate of pay of Rs. 200. Again on 29-8-1975 he was terminated with effect from 9-9-1975. He was appointed purely on non-renewable contract basis and that too only as Assistant in the Chit Fund Department. The Chit Funds was stopped in the Bank in view of the restrictions of the Reserve Bank of India, since 1978. The present dispute has been raised after a lapse of eleven years. It was belated in time. The reference is also to be rejected on this ground. It is incorrect to state that he worked for 360 days. Even assuming he worked for 240 days he cannot claim the benefits under Section 25-F since he was engaged only on

a contract basis. Hence the question of retrenchment compensation will not arise. As per recent amendment to the definition contract, under Section 2(50)(bb) termination of the Petitioner on the expiry of the period of contract cannot be treated as retrenchment. The Respondent denies that three persons who were juniors to him were re-employed as regular employees. They were given employment on the basis of individual application and on the basis of assessment of their merits. The explanation for delay in preferring the dispute cannot be accepted. Hence the claim is liable to be rejected.

4. The points for determination are (i) whether the termination of services of the Petitioner with effect from 9-9-1975 is justified? (ii) to what relief?

5. Petitioner examined himself as W.W.1. No oral evidence was adduced on the side of the Respondent. Ex. W-1 to W-13 were marked on the side of the Petitioner. No documents were marked on the side of the Respondent.

6. W.W.1 in his evidence would speak to the fact of his employment in the Chit Fund Department of the Respondent from 20-8-1974 to 9-9-1975 till his termination. He would file Ex. W-9 to W-11 the various letters addressed by him to the Respondent-Bank to absorb him into the regular service of the Bank. In the cross-examination he would admit that he has been appointed on a contract basis on a consolidated salary of Rs. 150 and he had been terminated after the expiry of his contract under Ex. W-2 order. He would again refer to his fresh appointment under Ex. W-3 on a consolidated salary of Rs. 200 and subsequent termination under Ex. W-4 on the expiry of contract period. He would also concede the Chit Fund Department ceased to function in 1978. In the light of his evidence it is not seriously disputed that though he was appointed on a contract basis, he worked continuously for 240 days during the period of 12 calendar months. The Respondent did not choose to deny categorically that the Petitioner did not work for more than 240 days. In short, there is no contract evidence on the side of the Respondent that the Petitioner did not work for 240 days. In view of this fact it is vehemently contended by the learned counsel for the Petitioner that the retrenchment of a worker by not complying with the provisions of Section 25-F would result the order of retrenchment as not valid. Therefore he is entitled to be reinstated. On the other hand the plea of the Respondent Counsel is that the retrenchment much less would not comply in this case since the Petitioner has been appointed on a specific contract. Incidentally he refers to the very order of appointment under Ex. W-1, dated 20-8-1974 issued to the Petitioner herein that he was appointed on contract for a period of six months on a consolidated salary of Rs. 150 p.m. The order further says as per condition 5 "on the expiry of period of the contract the Bank reserves the right to terminate his services without notice." Ex. W-2 is the Order dated 14-2-75 specifically stating that on the expiry of the contract (i.e.) on 22-7-1975 he would be terminated. Again it is seen under Ex. W-3, Order, he was appointed on contract for a period of six months on a consolidated salary of Rs. 200. This order of appointment also contains a condition under 5 reserving the right

on the Respondent Bank to terminate the services without notice. Ex. W-4 is the order dated 29-8-75 terminating the services of the Petitioner with effect from 9-9-75 on the expiry of contract period. Thus it is seen, the Petitioner was appointed only on a contract for a specific period, reserving the right on the Respondent-Bank to terminate the Petitioner on the expiry of contract period. However, he having completed 240 days of service, he questioned the order of termination as not legal, since the Respondent-Bank has not complied with Section 25-F of the I.D. Act.

7. In this connection he would straightaway drew my attention to a decision reported in 1976—I.L.L.J. page 478 (State Bank of India v. Sundaramoney). That was a case where the Supreme Court has held that—

“If the workman swims into the harbour of Section 25-F, he cannot be retrenched without payment at the time of retrenchment compensation computed as prescribed therein read with Section 25-B(2).”

The Supreme Court further held,

“Retrenchment” is no longer terra incognita but area covered by an expansive definition. It means, “to end, conclude, cease” in the present case, the employment ceased, concluded, ended on the expiration of nine days automatically, may be, cessation to all the same.”

“A termination is where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong, this policy of comprehensive definition of 2(oo) has been effectuated.” Termination embraces not merely the act of termination by the employer but the fact of termination, however, produced.”

In that case the worker was appointed as a cashier by the State Bank of India, Off and on, between July 4, 1970 and November, 18, 1972. The intermittent breaks notwithstanding, his total number of days of employment answered the test of “deemed” continuous service within Section 25-B(2) of the Act. But he was terminated on the ground, the appointment is purely a temporary one for a period of nine days but he may be terminated earlier, without assigning any reason therefore at the Bank’s discretion; the employment will automatically cease at the expiry of the period of 18-11-1972.

8. As against this decision, the learned counsel for the Respondent relied on 1974—I—L.L.J. page 459; 1975—II—L.L.J. page 78 and contended that the Petitioner has no right of employment and therefore he cannot claim re-employment.

9. In 1974-I-L.L.J. page 459 (Management of Crompton Engg. Co. (Madras) v. The Presiding Officer and others) the facts are,—

“The Crompton Engineering Company, Petitioner before the High Court employed respondents 2 to 4 temporarily for a specific period or

in respect of a particular contract work undertaken by the Petitioner. Those three persons were employed for several such periods and for several such contracts, as per the order of appointment and those appointments came to end as soon as the job was over. When dispute was raised by those three persons questioned the non-employment and claimed relief. The Labour Court in holding relied on 1970-II-L.L.J. page 454) and came to the conclusion that even casual labourers are included in the definition of “workman” in Section 2(s) of the Industrial Disputes Act, and, therefore, they were entitled to reinstatement.”

The High Court held,—

“Those persons were appointed only for a specific period or for a particular work and as soon as the period was over or the work was over their employment automatically came to an end and there is no rule of law, which contemplates such an employee must be given work again by the employer.”

In 1975-II-L.L.J. page 78 (Palaniswami v. M.C.W. Employees) the facts of the case are that the petitioner was appointed as Assistant Accountant on probation by the first respondent. The probation was periodically extended from time to time for unsatisfactory work. Finally he was given some alternative job and since did not accept the alternative job, his services were terminated by giving one month’s pay and by giving one month’s notice. Then the Petitioner therein had preferred an appeal to the Additional Commissioner for workmen’s compensation under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 and that appeal was dismissed. It is to quash this order that the present writ petition has been filed. In that case the probationer was terminated without conducting enquiry. Hence a question arose before the High Court whether the termination of services of a probationer must be preceded by enquiry. The High Court held :—

“Since the termination was not for misconduct or by way of punishment the question of conducting an enquiry did not arise.”

The High Court did not agree the enquiry is necessary as provided for an enquiry in case of misconduct of the worker. The High Court distinguished the Tamil Nadu Shops and Establishments Act from that of Industrial Disputes Act. This decision has no bearing on the point since the person concerned in this dispute arising under Industrial disputes Act.

10. The learned counsel for the Respondent besides relying on those decisions also relied on Section 2(00)(bb) of the Industrial Disputes Act And and urged that he having been terminated on the expiry of contract as per stipulation would not amount to retrenchment. Section 2(00)(bb) reads as follows :—

“Termination of service of a workman as a result of the non-renewal of the contract of employment between employer and the workman concerned on its expiry or of such contract being terminated under stipulation in that above contents therein.”

Amended Section of 2(oo)(bb) came into effect from 18th August 1984 whereas the Petitioner was terminated with effect from 9-9-1975. Therefore the learned counsel for the Petitioner pointed out that the Respondent cannot take shelter under Section 2(oo)(bb) raise a plea that there is no retrenchment in this case. On the other hand, the learned counsel for Respondent contended since the dispute was raised only in 1985, Section 2(oo)(bb) would be attracted even though the termination was on 1975. In short his version is by reason of raising the dispute in 1985 after amended Section 2(oo) can be taken up as applicable to cases even in 1975 that is with retrospective effect. This contention has straightaway to be rejected in view of decisions reported in 1975-II-L.L.J. page 352 and 1985-II-L.L.J. page 351.

11. In as much as Section 2(oo)(bb) cannot be availed by the Respondent-Bank, a question would arise whether it amounted to retrenchment, since the Petitioner was appointed on the basis contract for a specified period. In this connection, the learned counsel for the Petitioner would strenuously contend that 1976-I-L.L.J. page 478 is directly applicable to his case and therefore any amount of argument by the Respondent on the basis of contract of service cannot be invoked. At this stage it is significant to note the worker in 1976-I-L.L.J. page 478 was appointed as a cashier temporarily. But in this case, the Petitioner has been appointed on contract for six months as can be seen from Ex. W-1, W-4. Therefore the facts in this case squarely fall under the ambit of law laid down by the Madras High Court in the decision reported in 1974-I-L.L.J. page 459.

12. Incidentally it is also urged by the learned counsel for the Respondent that the Respondent Bank has closed its Chit Fund business in 1978. W.W.1 was appointed as Assistant in Chit Fund Department has admitted in the cross-examination that the Chit Fund Department is not functioning since 1978. While so it is the case of the Respondent that even assuming he is entitled to be reinstated it cannot be done so in as much as there is no post available for reinstatement. He again relied on the above decision reported in 1974-I-L.L.J. page 459 (Management of Crompton Engg. Co. v. Presiding officer) it has been held :—

“Essentially, an order of reinstatement postulates the existence of a post in which the particular person was working and with the reference to which his employment was terminated. When there was no post and there was no termination of employment, but only there was the employment of a particular individual for a specific period or for a specific work, the employment automatically came to an end on the expiry of such period.”

This finding squarely applies to the present case. The contention of the learned counsel for the Respondent has got to be accepted in this view also. That apart, the learned counsel for the Respondent drew my attention to a fact that the Petitioner was terminated in 1975 and raised a dispute some time in 1985 nearly after ten years and therefore he is not justified in claiming the relief. Of course, the Petitioner gives some reasons in his claim statement that he had been

making constant representations to the Respondent and since his parents were ill, he could not take prompt action and that he was ignorant of law and therefore the delay has occurred. But he has not chosen to depose the reasons of delay. Thus it seen the inordinate delay would weigh against the petitioner.

13. Viewed from any angle, the Petitioner is not entitled to succeed. For all these reasons, the termination of the Petitioner by the Respondent-Bank is justified.

14. POINT (ii) : In the result the Petitioner is not entitled to any relief. The claim is rejected. An award is passed accordingly. No costs.

Dated, this the 16th day of September, 1989.

THIRU K. NATARAJAN, Industrial Tribunal

[No. L-12012/145/85-D.IV(A)/IR(B)-I]

KANWAR RAJINDER SINGH, Dy. Secy.

WITNESSES EXAMINED

For workman—W.W.1—Thiru S.T. Sankara Subramaniam (Petitioner-Workman).

For Management : None.

DOCUMENT MARKED

For Workman :

Ex. W-1/20-8-74—Appointment order issued to the Petitioner Workman (copy).

Ex. W-2/14-2-75—Termination order issued to the Petitioner Workman (copy).

Ex. W-3/5-3-75—Appointment order issued to the Petitioner—Workman (copy).

Ex. W-4/29-8-75—Termination order issued to the Petitioner—Workman (copy).

Ex. W-5/12-3-85—Dispute raised before the Regional Labour Commissioner (Central), Madras (copy).

Ex. W-6/26-6-85—Management's reply to the Regional Labour Commissioner (Central), Madras (copy).

Ex. W-7/3-12-85—Reply sent by the Petitioner workman to the Assistant Labour Commissioner (C), Madras (copy).

Ex. W-8/12-12-85—Conciliation Failure Report (copy).

Ex. W-9/17-11-75—Petitioner-workman's letter to the Management-Bank for regularisation.

Ex. W-10/4-12-78—Petitioner-workman's letter to the Management-Bank for regularisation.

Ex. W-11/3-5-80—do—

Ex. W-12/27-12-84—Petitioner-workman's letter to the Chief Officer, Staff Department of the Management-Bank requesting for permanent job.

Ex. W-13/21-1-85—Reminder to the Chief Officer, Staff Department of the Management-Bank requesting for permanent job.

For Management : NIL.

THIRU K. NATARAJAN, Industrial Tribunal.

को दिनांक 21 मार्च, 1990

का. प्रा. 1064—केन्द्रीय सरकार ने यह समझान हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची में निर्दिष्ट है, उक्त अधिनियम के प्रयोजनों के लिए लोक उपयोगी सेवा घोषित किया जाए,

अतः अब औद्योगिक विवाद अधिनियम, 1947 की धारा 2 के खंड (क) के उपखंड (vi) द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए निरन्तर प्रभाव से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करता है।

[फा. नं. एस - 11017/3/85 - ई. 1 (ए)]

New Delhi, the 21st March, 1990

S.O. 1064.—Whereas the Central Government is satisfied that the public interest requires that the India Government Mint, Bombay which is specified in the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947), should be declared to be a public utility service for the purposes of the said Act;

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares with immediate effect the said industry to be a public utility service for the purposes of the said Act for a period of six months.

[No. S-11017/3/85-D.I(A)]

प्रदेश

का. प्रा. 1065.—केन्द्रीय सरकार ने यह समझान हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (vi) के उपखंड (2) के उपबन्धों के अनुसरण में भारत सरकार के अम संश्लेष की अधिसूचना संख्या का. प्रा. 2616 दिनांक 28 सितम्बर, 1989 द्वारा भारत सरकार टंकाल, कलकत्ता को उक्त अधिनियम के प्रयोजनों के लिए 6 अक्टूबर, 1989 से छह मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था।

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छह मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है।

अतः अब औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 2 के खंड (क) के उपखंड (vi) के परन्तुक द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 6 अप्रैल, 1990 से छह मास की और कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[फा. नं. एस - 11017/6/85 - ई. 1 (ए)]

ORDER

S.O. 1065.—Whereas the Central Government have been satisfied that the public interest so required had, in pursuance of the provision of sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the notification of the Government of India in the Ministry of Labour S.O. No. 2828 dated the 11th October, 1989 the Magnesite Mining Industry to be a public

utility service for the purposes of the said Act, for a period of six months from the 16th October, 1989;

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares the said industry to be a public utility service for the purpose of the said Act, for a further period of six months from the 6th April, 1990.

[No. S-11017/6/85-D.I(A)]

नई दिल्ली, 28 मार्च, 1990

का. प्रा. 1066—केन्द्रीय सरकार ने यह समझान हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (क) के उपखंड (vi) के उपबन्धों के अनुसरण में भारत सरकार के अम संश्लेष की अधिसूचना का. प्रा. 2828 दिनांक 11 अक्टूबर, 1989 द्वारा मैग्नेसाइट खनन उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 11 अक्टूबर, 1989 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है।

अतः अब औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (क) के उपखंड (vi) के परन्तुक द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 11 अप्रैल, 1990 से छः मास की और कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[फा. नं. एस - 11017/8/85 - ई - 1(ए)]

New Delhi, the 28th March, 1990

S.O. 1066.—Whereas the Central Government have ing been satisfied that the public interest so required had, in pursuance of the provision of sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the notification of the Government of India in the Ministry of Labour S.O. No. 2828 dated the 11th October, 1989 the Magnesite Mining Industry to be a public utility service for the purposes of the said Act, for a period of six months, from the 11th October, 1989;

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares the said industry to be a public utility service for the purpose of the said Act, for a further period of six months from the 11th April, 1990.

[No. S-11017/8/85-L.I(A)]

नई दिल्ली, 30 मार्च, 1990

ANNEXURE

का. अ. 1067.—केन्द्रीय सरकार ने यह समझाने की ज़रूरत पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (क) के उपखण्ड (vi) के उपखण्डों के अनुसरण में भारत सरकार के धर्म संचालन की अधिलेखन संज्ञा का, अ. 2747 दिनांक 9 अक्टूबर, 1989 द्वारा यूरेनियम उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 20 अक्टूबर, 1989 से छह मास की कालवधि के लिए लोक उपयोगी सेवा घोषित किया था।

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालवधि को छह मास की और कालवधि के लिए बढ़ाया जाना अपेक्षित है,

अतः अब औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 2 के खंड (क) के उपखण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 20 अप्रैल, 1990 से छह मास की और कालवधि के लिए लोक उपयोगी सेवा घोषित करती है।

[फा. नं. एस - 11017/10/85 - डी. 1 (ए)]
नन्द लाल, अवर सचिव

New Delhi, the 30th March, 1990

S.O. 1067.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provision of sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India, in the Ministry of Labour S.O. No. 2747 dated the 9th October, 1989 the Uranium Industry to be a public utility service for the purposes of the said Act, for a period of six months, from the 20th October, 1989;

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares the said industry to be a public utility service for the purpose of the said Act for a further period of six months from the 20th April, 1990.

[No. S-11017/10/85-D.I(A)]
NAND LAL, Under Secy.

नई दिल्ली, 23 मार्च, 1990

का. अ. 1068.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचपट को प्रकटित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 23rd March, 1990

S.O. 1068.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial dispute between the employers in relation to the Bank of Baroda and their workmen, which was received by the Central Government,

BEFORE SHRI ARJAN DEV PRESIDING OFFICER CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL, KANPUR

Industrial Dispute No. 71/88

In the matter of dispute between

The General Secretary UPBOB Employees Union C/o Bank of Baroda, 90/165 Iftikharabad Chamara Mandi, Kanpur.

AND

Regional Manager, Faizabad Region, Bank of Baroda, 19, Way Road, Lucknow.

AWARD

1. The Central Government, Ministry of Labour vide its notification No. L-12011/122/87-D. II (A) dated 1-6-89, has referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Bank of Baroda, in not granting 1/3rd of the wages to Shri Barsati, part time sweeper Bhadare Bazar Branch, w.e.f, March 1985 onwards, is justified ? If not, to what relief is the workman entitled ?"

2. In this case after the cross of the workman on 2-6-89, his evidence was closed. Thereafter, dates were fixed for filing of affidavit evidence by the management, on 30-11-89, the workman Shri Barshati moved an application with the prayer for giving a no claim award as dispute between him and the management has been resolved and there remains no grievances from his side against the management.

3. In view of the said application of the workman the reference order has become infructuous.

4. The reference is answered accordingly.

ARJAN DEV, Presiding Officer
[No. L-12011/122/87-D.II(A)]

का. अ. 1069.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बलुवा नगर बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण भुवनेश्वर के पंचपट को प्रकटित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 1069.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bhuvaneswar as shown in the Annexure in the Industrial dispute between the employers in relation to the Allahabad Bank and their workmen, which was received by the Central Government,

ANNEXURE

INDUSTRIAL TRIBUNAL : ORISSA :
BHUBANESWARINDUSTRIAL DISPUTE CASE NO. 26 OF 1989
(CENTRAL)

Dated : Bhubaneswar, the 17th February, 1990

BETWEEN

The Management of Allahabad Bank, 4, Syed
Amir Ali Avenue, Park Circus, Calcutta.....First Party-Management
Vrs.Their workmen represented through the General
Secretary, All Orissa Allahabad Bank Emp-
loyees' Union, Central Office, Naya Sarak,
Cuttack.

...Second Party-workmen

APPEARANCES :

None—For the parties.

AWARD

The Government of India in the Ministry of La-
bour in exercise of the powers conferred upon them
by clause (d) of sub-section (1) of section 10 of the
Industrial Disputes Act, 1947 (14 of 1947) and by
their Order No. L-12011/63/78-D.II(A) dated 23rd
November, 89 have referred the following dispute for
adjudication by this Tribunal :

“Whether the action of the management of
Allahabad Bank in not paying overtime
allowance to the workmen for work done
on 17-01-1978 is justified? If not, to what
relief are the concerned workmen entitled?”

2. This case was posted to today for hearing. Both
parties are found absent inspite of repeated calls.
They have also not taken any steps to-day. The
second party-workmen have not filed any statement
of claims despite registered notice. In view of the
non-appearance of both the parties in the Tribunal
and non-filing of statement of claims by the second
party-workmen, it can safely be inferred that at
present no dispute subsists between the parties.
Hence, a no dispute Award is passed, so far as this
reference is concerned. Dictated and corrected by me.

S. K. MISRA, Presiding Officer

[No L-12011/63/78-D.II(A)]

कां.सं. 1070—औद्योगिक विवाद अधिनियम, 1947 (1947 का
14) की धारा 17 के अन्वये में केन्द्रीय सरकार युनाइटेड बैंक ऑफ़
इंडिया के संबंधित के संबंधित नियोजकों और उनके कर्मचारियों के बीच, अन्-
तर्गत में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण
में, 2 जनवरी के पंचांग को प्रकाशित करती है, जो केन्द्रीय सरकार को
प्राप्त हुआ था।

S.O. 1070.—In pursuance of section 17 of the
Industrial Disputes Act, 1947 (14 of 1947), the
Central Government hereby publishes the award of
the Central Government Industrial Tribunal No. 2,
Dhanbad as shown in the Annexure in the Indus-
trial dispute between the employers in relation to
the United Bank of India and their workmen,
which was received by the Central Government.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT IN-
DUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

REFERENCE NO. 1 OF 1989

In the matter of an industrial dispute under Sec-
tion 10(1)(d) of the I.D. Act., 1947.

PARTIES :

Employers in relation to the management of
United Bank of India and their workmen.

APPEARANCES :

On behalf of the workmen.—Shri R. S.
Murthy, Advocate.On behalf of the employers.—Shri B. Joshi,
Advocate.

ESTATE.—Bihar.

INDUSTRY.—Banking.

Dated, Dhanbad, the 16th February, 1990.

AWARD

The Govt. of India, Ministry of Labour in exer-
cise of the powers conferred on them under Section
10(1)(d) of the I.D. Act., 1947 has referred the
following dispute to this Tribunal for adjudication
vide their Order No. L-12012/310/88-D.2(A),
dated, the 7th November, 1988.

SCHEDULE

“Whether the action of the management of
United Bank of India in dismissing from
service Shri Malay Kumar Basu is justi-
fied? If not, to what relief is the work-
man entitled?”

The case of the workman is that the concerned
workman Shri Malay Kumar Basu was appointed
as permanent subs-staff Grade-IV in the United
Bank of India branch Ramgarh on 24-11-1981. A
complaint was made by holder of savings bank
account No. 755 of Ramgarh Branch of United
Bank of India that on 19-7-82 Smt. Lasbir Kaur
had handed over Rs. 500/- to the concerned work-
man for depositing in her savings bank account
No. 755. But instead of depositing the said amount
with the Bank the concerned workman made a
false entry of Rs. 500/- in the Pass Book of Smt.
Jasbir Kaur. Thereafter on 7-10-82 when Smt.
Kaur produced her Pass Book at the branch for
uptodating her account she came to know that the
sum of Rs. 500/- was not deposited by the con-
cerned workman in her Saving Bank account on
19-7-82 and a false credit entry was made by him

in her Pass Book. Being asked by Smt. Kaur the concerned workman refunded Rs. 500/- to her on subsequent date. The allegation is that the concerned workman had temporarily misappropriated the said amount of Rs. 500/- for his personal gain.

It was further alleged by the management that as subordinate staff of the branch it was the duty of the concerned workman to carry documents and papers to various banks and parties for delivery against signatures of the concerned recipient in the Bank's Peon Book towards acknowledgement of such instrument. It was found that on several occasions, such as, on 15-6-82, 16-6-82, 17-6-82, 3-7-82 and 6-7-82 the concerned workman put his signature in the Peon Book as recipient. The concerned workman on 9-10-82, 15-10-82, 29-6-82, 21-8-82, 1-9-82 and 16-9-82 put assumed signatures of the recipients in the Peon Book towards the receipt of the documents and papers directed for other Banks and parties with a mala fide intent and purpose and obtained receipts on plain papers from the officials of various Banks and parties against delivery of the instrument which were not deposited with the Bank. The management also alleged that in the month of August, 1983 the concerned workman was found practising the signature of the Sr. Manager of the Bank on an envelope of the Bank and the concerned workman was found copying on the envelopes some signatures of the Manager which reveals mala fide intent and purpose by the concerned workman which was likely to prejudice the interest of the Bank.

On the above allegations the concerned workman was charged for committing acts of misconduct amounting to (1) misappropriation of Bank's fund and (2) doing acts prejudicial to the interest of the Bank.

The concerned workman submitted his reply to the chargesheet and the management not being satisfied with the explanation of the concerned workman, a departmental enquiry was ordered in which Shri Abhi Chakravorty the then Dy. Regional Manager, United Bank of India was appointed as Enquiry Officer to conduct the departmental enquiry into the charges against the concerned workman. The enquiry officer found the concerned workman guilty of the charges levelled against him. After considering the enquiry report the Dy. Chief Officer-cum-Disciplinary officer, Head office, Calcutta dismissed the concerned workman on 6-12-86. The concerned workman filed an appeal on 17-12-87 against the order of his dismissal to the Chief Officer of the Bank but he said appellate authority rejected his appeal on 6-1-88.

Forcibly and on persuasion by the then Branch Manager the concerned workman was forced to work on Grade-III post in addition to his job of Grade-IV. When the concerned workman was a Grade-IV staff he was not supposed to handle the documents pertaining to the work of Grade-III staff. The concerned workman was the Unit Secretary of the Union of the Bank employees and as such he had to take grievances of the employees to the Bank Manager from time to time for which the then Bank Manager was annoyed with him and had verbally warned him to desist from the

union activities failing which disciplinary action would be taken against him. A well planned programme was hatched up against the concerned workman and the then Bank Manager had approached Smt. Jasbir Kaur at her residence and had persuaded her to make a complaint in writing against the concerned workman. In the departmental enquiry the Bank did not examine the complaint Smt. Jasbir Kaur and as such the whole allegation levelled against the concerned workman was fit to be rejected. The concerned workman was not afforded full and reasonable opportunities to adduce evidence to cross-examine the management's witnesses. The enquiry officer acted in connivance with the Bank Manager. The gravity of the misconduct even accepted is not to such a great extent which warrants dismissal for committing misconduct by Grade-IV staff for the work of Grade-III staff. The order of dismissal is not a speaking order in as much as it did not consider all the documents in the enquiry proceedings and the report of the enquiry officer. The appeal was rejected on the ground of time barred only and the appellate authority ought to have condoned the delay and considered his appeal on merit. On the industrial dispute raised before the ALC(C) a conciliation proceeding started which ended in failure and thereafter the present reference was made to this Tribunal for adjudication. It is prayed that it may be held that the order of dismissal of the concerned workman is bad and illegal and he should be reinstated with back wages and other benefits.

The case of the management is that the concerned workman committed serious misconduct on 19-7-82 and on other dates for which he was charged for commission of misconduct of misappropriation of Bank's fund and doing acts prejudicial to the interest of the Bank. A chargesheet dated 16/19-3-84 was issued to the concerned workman containing the facts constituting the misconduct charged against him. The chargesheet was signed by the Dy. Chief Officer (Discipline) Personnel department, Head office who is competent to initiate disciplinary proceedings as per the delegation of power given to him. The concerned workman submitted his reply vide letter dated 6-4-84 denying the charges levelled against him. The concerned workman practically confessed his guilt and put forth plea on extenuating grounds for exoneration of his charges. The management appointed Shri Abhi Chakravorty, Dy. Regional Manager (Bihar) South Region of the Bank by letter dated 15-12-84 as Enquiry officer to conduct the enquiry against the concerned workman. The enquiry officer fixed the date of enquiry on 22-5-87 and intimated the same to the concerned workman by letter dated 6-5-85. The departmental enquiry was conducted on 22-5-85, 10-6-85, 22-8-85, 4.11.85 and 5.11.85 in presence of the concerned workman. The enquiry was conducted according to the principles of natural justice. The management witnesses were examined in presence of the concerned workman and his defence representative and they were given full opportunity to cross-examine the management's witnesses. The management exhibited documents and concerned workman and his co-worker were

given opportunity to cross-examine the management's witnesses on the documents. The concerned workman was given full opportunity to give his own statement, to produce his defence witness and documents in support of his defence. The enquiry officer conducted the enquiry fairly and properly. At no stage of the enquiry the concerned workman raised any objection against the enquiry officer or against the manner of conducting enquiry. The enquiry officer was unbiased. After completing the enquiry, the enquiry officer submitted his enquiry report dated 6-2-86 holding the concerned workman guilty of the misconduct charged against him. The enquiry proceeding, the enquiry report and all relevant papers were pursued at different levels by the competent authority and it was decided to impose punishment of dismissal for the misconduct committed by concerned workman. The concerned workman was issued with a letter dated 12/14-8-86 for submission of his representation, if any, against the proposal for his dismissal from service.

He was also given opportunity to be personally present before the disciplinary authority and to make his submission if any against the proposed punishment. The concerned workman was dismissed from service by letter dated 8-12-86 with immediate effect under the signature of the Dy. Chief Officer (discipline) who is the punishing authority. The concerned workman had submitted an appeal to the appellate authority for reduction of his punishment if dismissal could not be set aside. The appeal of the concerned workman was not considered as he had not preferred an appeal within the prescribed period. The concerned workman did not submit any satisfactory cause for delay in filing the appeal and had not prayed for condonation of the delay for filing the appeal. The dismissal of the concerned workman was affected on the basis of charges duly established in a departmental enquiry conducted in accordance with the principles of natural justice and as such it was also prayed that the fairness or otherwise of the domestic enquiry be decided as a preliminary issue so that in case it is held that the enquiry was neither fair nor proper, opportunity may be given to the management to produce witness to prove the charges against the concerned workman. On the above facts it is prayed that an Award be passed holding that the concerned workman is not entitled to any relief.

The preliminary point regarding the fairness or otherwise of the enquiry proceeding was heard at the first instance as the fairness of the enquiry was being challenged by the concerned workman. The management examined the enquiry officer and produced all the documents relating to the enquiry proceeding. After hearing both the parties the preliminary issue was decided on 22-7-89 holding that the enquiry was fair, proper and in accordance with the principle of natural justice and the case was fixed for hearing on merit on the materials which were already on the record of the domestic enquiry.

The points for decision in this case are (1) whether the charges levelled against the concerned workman was established in the domestic enquiry and (2) whether the punishment of dismissal passed against the concerned workman was proportionate to the gravity of the misconduct established against him.

The documents relating to the enquiry proceeding have been marked Ext. M-1 to M-14 in this case.

Point No. 1

The concerned workman Shri M. K. Basu has been charged on 3 counts. I will first take up charge No. 1 which deals with the amount of Smt. Jasbir Kaur given to the concerned workman for depositing in her Savings Bank account at United Bank of India, Ramgarh branch but the concerned workman did not deposit the said amount in her Saving Bank account of the Bank and the concerned workman made a false entry in the Saving Bank Pass Book of Smt. Jasbir Kaur showing the amount to have been credited in the Bank's Account but in fact the amount had not been deposited. The facts are almost admitted. It will appear from Ext. M-2 which is reply of the concerned workman to the chargesheet Ext. M-1, that Rs. 500 was given to him by Smt. Jasbir Kaur. Ext. ME-7 marked by the Enquiry Officer is the statement which the concerned workman had given on 11-11-83. It clearly shows that Smt. Jasbir Kaur had given him Rs. 500 on 19-7-82 along with her Saving Bank Pass Book for depositing the same in United Bank of India, Ramgarh Branch and to return back the Pass Book after depositing the amount. He has further tried to give a false explanation in Ext. ME-7 Ext. ME-2 is the statement of Smt. Jasbir Kaur made to the Manager United Bank of India, Ramgarh branch on 9-11-83. It will appear from the statement of Jasbir Kaur that she had handed over Rs. 500 to the concerned workman on 19-7-82 for depositing in her Saving Bank account No. 755. It is stated that she got her Pass Book on 21-7-83 with the credit entry of Rs. 500 on 19-7-82. It is further stated in Ext. ME-2 that on 7-2-82 Smt. Jasbir Kaur went to the branch office of the bank for depositing Rs. 200 in her account and at that time she learnt from one of the staff members that no deposit of Rs. 500 was made in the account of the Bank on 19-7-82. Thereafter she went to the Bank Manager and informed him and then she contacted the concerned workman to know as to why the amount of Rs. 500 was not deposited in her account and then the concerned workman promised to return the amount of Rs. 500 to her within a week and ultimately the concerned workman returned Rs. 500 to her. In the end she has stated that she does not claim any amount from the Bank. Ext. ME-1 is the Saving Bank Pass Book of Smt. Jasbir Kaur which will show that the amount of Rs. 500 shown credited on 19-7-82 was penned through subsequently. At page-40 of the enquiry proceeding Ext. M-5 the concerned workman has given his statement regarding the amount of Jasbir Kaur. He has stated that he failed to keep the request of Smt. Jasbir Kaur due to the reasons he has stated in his statement in Ext. ME-7 lodged with the investigating officer Shri B. Dutta but he refunded the money to her on 9-12-82. He also produced Ext. DE-3 before the enquiry officer purported to be under the signature of Smt. Jasbir Kaur. It is stated in Ext. DE-3 by Smt. Jasbir Kaur that the concerned workman had returned Rs. 500. It is further stated that as she had received back the money she has no more complaint against the concerned workman. It is clear that the said statement was obtained by the concerned workman from Smt. Jasbir Kaur but the fact remains that Smt. Jasbir Kaur had handed over Rs. 500 to the concerned workman for depositing in her saving bank account which the concerned workman did

not deposit and made a false entry in the Saving Bank account in order to show that the amount of Rs. 500 has been credited in her account. It further appears that there was no entry of the deposit of the said amount in the Bank's account and that admittedly the concerned workman had not deposited the said amount with the Bank in the Saving Bank Account of Smt. Jasbir Kaur. It appears that when Smt. Jasbir Kaur confronted the concerned workman with the facts, the concerned workman returned back her money and therefore Jasbir Kaur felt satisfied and did not like to proceed against the concerned workman.

Admittedly the concerned workman was a Class IV Staff and it was not a part of his job to accept money on behalf of the Bank for depositing in the Saving Bank account. It appears that the concerned workman was known to Smt. Jasbir Kaur from before and that in the past also Smt. Jasbir Kaur used to give her money to deposit in her Saving Bank account. It appears therefore that it was a private transaction between Smt. Jasbir Kaur and the concerned workman in which Smt. Jasbir Kaur had requested the concerned workman to deposit the amount of Rs. 500 in her Saving Bank account. The said act of the concerned workman cannot be said to have been done in the course of his employment. A case of similar nature was decided by their Lordship of Supreme Court in AIR 1978-Sc-page 1263. In the said case a client of the Bank paid certain amount to an employee of the Bank for crediting it to her account. The onus lies on the client to show that she paid the amount to the employee of the Bank and was received by the employee in the course of his employment with the Bank. In such a case the false and fraudulent entry about the deposit of the amount in the Pass Book of the client, could not shift the onus of the Bank to prove the contrary. A master is liable for his servant's fraud perpetuated in the course of master's business, whether the fraud was for the master's benefit or not, if it was committed by the servant in the course of his employment. In the case before their Lordship the husband of the client gave a cheque drawn on his bank account to the Bank employee for crediting it to the account of the client by endorsing on its back and the employee cashed the cheque and misappropriated the amount. The act of the employee which caused loss to the client cannot be said to have been committed by the employee in the course of his employment with the Bank. Their Lordship held that in such a case the fact that the false and fictitious entries to cover up his fraud was made by the employee in the Pass Book of the client could not make embezzlement committed by the employee and the act committed in the course of his employment by the Bank. Consequently it was held that the Bank was not liable to hold good the loss caused by the act of the employee because the later in such a case would be deemed to have acted as an Agent of the client and not within the scope of his employment with the Bank. The present case stands almost on similar footing. The concerned workman had acted as an Agent of Smt. Jasbir Kaur and the act of the concerned workman cannot be said to be within the scope of his employment with the Bank. The concerned workman therefore did not misappropriate the amount of the Bank and the Bank cannot hold the concerned

workman guilty of the charge of misappropriation for the amount which the concerned workman had received from Smt. Jasbir Kaur as her Agent. It is a different matter that the concerned workman had temporarily misappropriated the amount of Smt. Jasbir Kaur for which the concerned workman could be liable for criminal proceeding at the instance of Smt. Jasbir Kaur but as Jasbir Kaur was paid the amount of Rs. 500 by the concerned workman she did not like to proceed further against the concerned workman. I hold therefore that the concerned workman had not temporarily misappropriated the amount of Rs. 500 belonging to the Bank and the said act of the concerned workman cannot be said to have affected prejudicially the interest of the Bank.

I hold therefore that Charge No. 1 against the concerned workman has not been established.

Now I take up charge No. III which relates to the fact that in the month of August, 1983 the concerned workman was found practising the signature of the Branch Manager on the envelope of the Bank and was found copying on the envelopes some signature of the Manager. Admittedly there is no evidence to the effect that the concerned workman had ever signed on any document putting the signature of Shri M. K. Roy the ex-Agent of United Bank of India, Ramgarh, branch. Neither there is any evidence that any attempt had been made by the concerned workman by putting the signature of Shri M. K. Roy, ex-Agent of United Bank of India, Ramgarh branch and tried to cheat any person. There is also no evidence to the effect that the concerned workman had forged the signature of Shri Roy on any document. The evidence only shows that he was practising the signature of Shri M. K. Roy on some envelope and this in itself cannot be taken to constitute any fraud or cheating on the part of the concerned workman. I hold therefore that charge No. 3 even if established does not disclose any mala fide intent and purpose which is likely to prejudice the interest of the Bank and accordingly the concerned workman is exonerated of charge No. III.

Now I take up charge No. II in which the allegation is that as subordinate staff of the Bank it was his duty to carry documents and papers to various Banks and parties for delivery against the signature of the concerned recipient in the Bank's Peon Book towards acknowledgement of such instrument and it was found on 15-6-82 and other dates that the concerned workman had put his signature in the Peon Book as recipient and that on other dates he had put assumed signatures of the recipient in the Peon Book towards receipt of the document and papers directed for other bank and parties with a mala fide intent and purpose and obtained receipt on a plain papers from the officials of various banks and parties against delivery of the instrument which were not deposited with the Bank. MW-1 Shri M. K. Roy-ex-Agent of the branch stated that during his tenure as Agent, United Bank of India, Ramgarh branch he received verbal complaint from the concerned parties that the concerned workman Shri M. K. Basu, sub-staff delivered letters/documents to the parties without authentication in the Bank's Peon Book. He further stated that he wrote letters to Punjab National Bank, Ramgarh

branch and Bank of Baroda, Ramgarh branch to enquire the matter officially and he was shown the said letters Ext. ME-3 and ME-4 as sender of the same. MW-1 read out the replies of Punjab National Bank and Bank of Baroda which revealed that these 2 banks received document from United Bank of India, Ramgarh branch but the signatures appearing in the Bank's Pass Book did not belong to any authorised officer of their branch. The Peon Book has been marked as Ext. ME-5. The evidence of MW-1 shows that the initials as made in the recipient columns of Ext. ME-5 at page 160, 161, 168 and 169 are of the concerned workman. MW1 also stated that all the assumed signatures of the recipient at pages 165, 180, 182, 186, 171 and 194 have been made by the concerned workman. MW-2 Shri Biswarup Dutta who had made a preliminary investigation in the complaint of Smt. Jasbir Kaur has stated that the concerned workman admitted before him that the entries in the recipient column at pages 160, 161, 168 and 169 and the assumed signatures in the recipient column of pages 165, 180, 182, 186, 191 and 194 of Ext. ME-5 were made by the concerned workman. In the statement of the concerned workman before the enquiry officer the concerned workman stated in answer to question No. 4 of the cross-examination that he had put his initials in the recipient column in different pages of Peon Books while he used to deliver papers/documents to different parties/banks. He further stated that subsequently he used to obtain receipt from the recipient parties/banks in white papers with proper authentication. Thus it is almost admitted that the concerned workman used to put his initial in the recipient column of the Peon Book Ext. ME-5 and made some assumed signature of recipients on different pages of the Bank's Pass Book while discharging his duties of delivering letters/documents to other banks/parties. It is nowhere alleged that the concerned workman had not delivered documents/letters sent by the Bank through the Peon Book to the recipient. The allegation is that the concerned workman did not obtain the signature of the recipient of the documents and that the concerned workman himself used to sign as recipient at some places of the Peon Book and at some places used to falsely sign for the recipients. It is clear therefore that the concerned workman was committing fraud with the Bank by showing that the documents have been received by the recipient and that the Peon Book bears the signature of the recipient. This was being done in the course of employment of the concerned workman and the concerned workman was not taking the signature of the actual recipient which appears to be an act of misconduct committed by the concerned workman.

Point No. 2

The said allegation in charge No. 2 is not so serious as to call for a dismissal of the concerned workman as it has not been shown that the concerned workman did not deliver the document to the recipient. However there is an element of fraud committed by the concerned workman in himself signing the Peon Book in place of recipient which was not the part of his job and he had put the signature in the recipient column in order to show that the letters/documents were delivered to the recipient. Ext. M-9 dated

6-12-86 is a letter of dismissal of the concerned workman. It appears that he is sitting idle since 6-12-86 and I think that the non-payment of his wages for the idle period will be more than sufficient punishment for his misconduct relating to charge No. 2.

In the result, I hold that the action of the management of United Bank of India in dismissing the concerned workman Shri Malay Kumar Basu from service is not justified. The management is directed to reinstate the concerned workman from the date of his dismissal within one month from the date of publication of the Award. However, the concerned workman will not be paid his back wages from the date of his dismissal to the date of his joining as punishment for charge No. 2 established against him. He will be entitled to continuity of service.

This is my Award.

I. N. SINHA, Presiding Officer.
[No. L-12012/310/88-D.II(A)]

का. प्र. 1071 औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में, केन्द्रिय सरकार आन्ध्रा बैंक के प्रबंधन के संबंध में निम्नलिखित आदेशों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण हैदराबाद के पंचसद को प्रकाशित करता है, जो केन्द्रिय सरकार को प्राप्त हुआ था।

S.O. 1071.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the Industrial dispute between the employers in relation to the Andhra Bank and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Shri D. Ramalinga, Swamy, B. Com., B.L.,
Industrial Tribunal.

Dated 19th February, 1990

Industrial Dispute No. 55 of 1987.

BETWEEN :

The Workmen of Andhra Bank, Hanumakonda
Branch. (A.P.)

AND

The Management of Andhra Bank, Hyderabad.
(A.P.)

APPEARANCES :

M/s. A. K. Jayaprakash Rao, P. Damodhar Reddy, Ch. Lakshminarayana and V. N. Goud, Advocates for the Workmen.

Shri K. Srinivasa Murthy, Hon. Director and Miss. G. Sudha, Hon. Secretary of the Andhra Pradesh Federation of Chambers

of Commerce and Industry for the Management.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-12012/3(87-D.IV(A), dt. 10-11-1987 referred the following dispute under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 between the employer in relation to the management of Andhra Bank and their workmen to this Tribunal for adjudication :

“Whether the action of the Management of Andhra Bank, Hyderabad in terminating the services of Sri V. Surajah, Sub-Staff, Andhra Bank, Hanumakonda Branch w.e.f. 23-9-83 is justified ? If not, to what relief the concerned workman is entitled ?”

This reference was registered as Industrial Dispute No. 55 of 1987 and notices were issued to the parties.

2. The admitted and undisputable facts of this dispute are briefly as follows :—Andhra Bank recruited Sub-Staff by notifying the vacancies to the Employment Exchange. The Employment Exchange sponsored some candidates including V. Suraih the workmen of this dispute, by sending a list to the Bank. The Bank sent an interview letter as per Ex. W1 dt. 1-9-1982 calling this workman for an interview to be held on 11-9-1982 at 11.00 a.m. at Manumakonda. In this interview letter, the workman was instructed to bring all the original certificates with regard to his educational qualifications etc. and it was further stated : “You should also bring the enclosed bio-data form duly filled in all respects along with the Employment Exchange Registration card and documents”. He was interviewed by a Selection Committee and thereafter the Bank issued Ex. W2 appointment order dt. 25-2-1983, appointing the workman in the Sub-Ordinate Staff Cadre temporarily for a period of two months. In para 3 of the Order it was stated, that his appointment would be regularised in the permanent cadre on satisfactory performance, conduct etc. After receiving the appointment order, he joined in the service on 15-3-1983 in the Andhra Bank, Hanumakonda Branch and completed a contiguous service of six months by 15-9-1983. The Manager of Hanumakonda Branch of Andhra Bank sent a letter Ex. W5 dt. 21-9-1983 to the Regional Manager, Warangal informing that the workman is working with interest, his services are satisfactory, and that he may be confirmed immediately. The Manager, Hanumakonda Branch issued proceedings dt. 23-9-1983 as per Ex. W6 intimating the workman, that his services were dispensed with w.e.f. 23-9-1983 as per the Central Office instructions. The educational qualifications of the workman by the time he was appointed for the post was, he failed in 10th Class. As per Ex. M4 School Transfer Certificate, he appeared and failed for the 10th Class in March, 1976. The order Ex. W6 does not contain any reasons for the termination except stating, that the termination is under the instructions of the Central Office. The so called instructions of the Central Office are not placed before this Tribunal. After the termination, the workman filed an appeal before the Assistant Commissioner of Labour, Warangal in S.C. No. 13.83 under the A.P. Shops and Establishments Act 1966, that appeal was

opposed by the Bank on the ground that the provisions of the A. P. Shops and Establishments Act 1966 do not apply to Banks, and that therefore, the authority under Section 41 of the A. P. Shops and Establishments Act has no authority or jurisdiction to entertain the appeal. Ultimately that appeal was dismissed for want of jurisdiction by an order dt. 26-6-1985 as per Ex. M8. Subsequently, the Andhra Bank Employees Union took up the cause of the workman and addressed a letter dated 22-7-1986 to the Assistant Labour Commissioner, Hyderabad as per Ex. W7 seeking his intervention. The Assistant Labour Commissioner, Hyderabad conducted conciliation proceedings, but in vain as per Ex. W8 minutes dt. 22-12-1986 and hence the reference.

3. The worker filed his claim statement stating : that at the time of the interview, he submitted all his certificates regarding his educational qualifications, and the Management after having scrutinised and satisfied with the certificates only, appointed him in the job; that his failure in the 10th Class has to be taken as a pass in 7th Class which is required for Sub-Staff appointment; that the termination is without assigning any reasons and without any enquiry; and that the persons who were appointed along with him were ultimately confirmed in the permanent posts by the Bank. Though Ex. W6 termination order does not disclose the reasons for the sudden termination of the services at a time when his confirmation for the job was recommended by the Branch Manager, Manumakonda Branch as per Ex. W5. The Management came forward with its reasons in the counter-filed before this Tribunal. A close reading of the counter shows, that according to the Management : the maximum qualification for the post of Sub-Staff is a pass in 7th Class; that since the worker failed 10th Class if inipidely means that he passed 9th class; that therefore, he is not eligible for the post as he possessed higher qualification than the maximum educational qualification prescribed for the post that he suppressed his real educational qualification claiming that he passed only 7th Class, that such misrepresentation makes him undersirable to continue in the services of the Bank; and that no enquiry need be conducted for terminating the services of a temporary employee.

4. In the circumstances, the following points will arise for consideration in this dispute;

- (i) Whether the maximum educational qualifications prescribed for the post of Sub-Staff in the Bank is a pass in the 7th Class, and Whether any higher qualification than the pass in 7th Class is a dis-qualification for the post of Sub-staff as contended by the Management ?
- (ii) Whether the worker made any mis-representation at the time of his selection for the post suppressing his real educational qualification, and that thereby whether he became an undersirable candidate for the post in the Bank ?
- (iii) Whether the termination of the services of the worker is not just, valid and proper ?

(iv) Whether the worker was appointed in a permanent post and is entitled to be confirmed in the post

(v) To what result ?

5. W.W1 is the worker, and M. W1 is V. Bhagawathi who is a Personnel Officer working in Andhra Bank since the year 1981. In the counter it was categorically pleaded by the Bank in paras 2 and 3, that the maximum qualification prescribed for the post of sub-staff is only a pass in 7th class. M.W1 deposed, that the procedure laid down in the Circular Ex. M6 was followed by the Bank for the recruitment of the Sub-Staff. The Management claims that on the basis of Ex. M6 alone which prescribes that the maximum qualification is a pass in the 7th Class, the services of this worker was terminated. Ex. M6 is a letter of the Central Office of the Andhra Bank, Hyderabad dt. 12-7-1982 addressed to all their offices informing the procedure to be followed for the recruitment of Sub-Staff. Clause 1 of the guidelines thereof prescribes the qualifications for the recruitment of Sub-Staff as : "Essential 6th Class pass"; "Desirable 7th Class pass". Clause 2 prescribes the age limits as minimum 18 years, maximum 25 years. Therefore, these guidelines used four different terms viz., "essential", "desirable", "minimum" and "maximum". Conspicuously with regard to educational qualification, no "maximum" limit or prohibition was laid indicating, that maximum educational qualification for the post of Sub-Staff is only 7th Class pass or that a candidate having higher qualification than the pass in 7th Class is "undesirable", or that a candidate who is having qualification more than 7th Class pass should not be recruited. Clause 1 merely states, that essential qualification is 6th Class pass, which may impliedly mean that it is minimum educational qualification required for the post. But when it said, that a pass in the 7th class is desirable, it merely indicates, that a candidate who has passed 7th Class should be preferred than a candidate who merely passed 6th Class, but in no event, it suggests, that a person having higher qualifications than 7th class is an undesirable candidate. The Management could not place any other rules or guidelines prescribed by the Management for the recruitment of sub-staff laying down, that a person having higher qualification than a passed in 7th Class should not be recruited for the post of Sub-Staff. Therefore, in the light of this Ex. M6 document the plea taken by the Management in its counter and the evidence of M.W1, that the maximum qualification prescribed for the post of sub-staff is 7th Class is obviously not true. There is neither any maximum qualification prescribed, nor any prohibition to post a candidate as Sub-Staff if he has any higher qualification than a pass in the 7th Class.

6. In 1986 (I)LLJ, page 127 (M. D. SING v. RESERVE BANK OF INDIA) A Bench of the Supreme Court considered a similar situation. In that case, the worker who was a non-matriculate was appointed as a Tikka Mazdoor in the Reserve Bank of India in the year 1974, by including his name in the list of Tikka Mazdoor. It is not a regular appointment or a temporary appointment of any post. He has to daily attend the office in the morning to elicit whether any work is available to him, and if there is any work for him on that day, he will be engage for the work and he will be paid wages for that day. Subsequently, while he was continuing in the list of

Tikka Mazdoors, he passed matriculation in the year 1975. There was a confidential circular dt. 27-6-1976 issued by the bank stating, that the matriculates cannot be retained in the list of Tikka Mazdoors and in view of this Circular, though no formal orders was issued removing his name from the list of Tikka Mazdoors, the Bank discontinued allotting work to him, thereby impliedly amounting to removal of his name from the list. Obviously it was done so, as he acquired higher a qualification than a non-matriculate. The Supreme Court took a serious view of the matter by holding at page 132 in para 15 as follows :

"It has disturbed us to find that the appellant was denied job because he had become better qualified. Perhaps the Reserve Bank of India and its officers are not aware of the grave un-employment problem facing the youth of this country and also not aware of the fact that graduates, both boys and girls, sweep our roads, and postgraduates in hundreds, if not in thousands, apply for the posts of peons. It has been our sad experience to find employer trying to stifle the efforts of employees in the legitimate claims seeking benefits under the Industrial Law by tying them out in adjudication proceedings raising technical and super technical pleas.

Even otherwise as stated above, there is no maximum qualification prescribed for the post of a Sub-Staff, and there is no prohibition for recruiting a candidate possessing higher qualification than a pass in 7th Class for the post of Sub-Staff as per the guidelines and this point is answered accordingly.

7. Point (ii) : The alternative contention raised by the Management is, that the worker made a misrepresentation at the time of the Selection stating, that he passed only 7th Class suppressing the fact, that he failed 10th Class. In this case, the worker did not put in any application directly to the Bank before he received Ex. W1 Call letter dt. 1-9-1982, since his name was sponsored by the Employment Exchange by sending a list of candidates. Ex. M5 is the list of candidates sponsored by the Employment Exchange, and in Item 7 thereof, there is the entry relating to his worker, and his educational qualification was stated as 7th Class. The educational qualification entered therein is, the educational qualification on the basis of which the employee got his name registered in the Employment Exchange at the time of registration. It is an information furnished to the exchange as it stood at that time. Therefore, it cannot be said, that the entry in this list is a false representation made to the Bank at the time of his selection. In Ex. W1 call letter, the bank specifically directed this worker to attend for the interview on 11-9-1982 along with his certificates, and also by bringing the enclosed biodata form duly filled in all respects. There is nothing on record to show, that he did not enclose the Biodata form and submit it at the time of his interview. M.W1 is not the person who interviewed him. If the Biodata form is not duly filled in and submitted at the time of the interview, the Selection Committee would have taken an objection and would not have selected him for the post. Therefore, in the absence of any evidence to the contra, it must be presumed, that this worker duly filled in the Biodata form and submitted it at

the time of his interview to the Management. It is not as though, that the Management is taken by surprise with regard to this Biodata form. In Ex. W8 minutes of the Assistant Labour Commissioner dt. 22-12-1986 it was categorically mentioned, that the Management's representative did not produce the Biodata-form even he was requested to do so at the time of the prior meeting and that he ultimately represented that it is not available in their records. The earliest representation made to the Management by the worker at the time of his selection will be in the Biodata form, and either it is suppressed or is missing. It appears, that interviews were conducted by the Selection Committee consisting of three persons who drafted evaluation sheets at the time of interview they are Exs. M2, M2(a) and M2(b). In all these sheets, with regard to the educational qualification, it was said that he passed the 7th Class. Evidently the worker passed 7th Class by the time of the interview and failed 10th class. These evaluation sheets do not state the worker represented that his qualification is only 7th Class. On the other hand W.W1 categorically deposed in his evidence, that he filled up the Biodata form and gave it to the Bank and placed it before the Interview Committee. In the Biodata Form he mentioned that his educational qualification as 10th Class failed. M.W1 is not a competent witness to depose, as to what exact representation was made by the workman with regard to his educational qualifications at the time of his interview. Thus, the evidence of W.W1 stands unchallenged. The fact that the Biodata form could not be produced by the Bank for whatever reason it may be further supports the truth of his evidence, that he disclosed that he failed 10th Class even at the time of the interview by categorically mentioning it in the Biodata form. Therefore, there is no positive evidence to probablise the version of the Management, that the workman falsely represented or mis-represented that he passed only 7th Class by suppressing the fact, that he failed 10th Class. On the other hand, there is positive evidence of W.W1 to the effect, that he represented even at the time of the interview that he failed 10th Class and that he did not suppress any facts. Therefore I find, that there is no misrepresentation and that as such, that the services of the worker did not become undesirable and this point is answered accordingly.

8. Point (iii) :—If really the Management intended to terminate the services of the worker on the ground of misrepresentation and suppression of facts regarding his educational qualifications, such ground amounts to misconduct on the part of the worker at the time of his selection. If that is so, the principles of natural justice require, that he should be given a proper opportunity to prove, that he did not commit any such irregularity or misconduct, by issuing a show cause, calling for explanation etc. But in this case, the termination was suddenly made without any proper notice or without calling for his explanation. In view of my findings on Points 1 and 2, the termination of the services is not just, valid and proper. Apart from it, the sudden termination of his services abruptly without giving him any opportunity to prove his innocence, it opposed to the principles of natural justice and that therefore the termination is not just valid and proper and this point is answered accordingly.

9. Point (iv) :—From the admitted pleadings and evidence, it is not now in dispute, that the workman

was recruited for a permanent post, and that normally he would have been confirmed in the post after the expiry of the probation period of six months. M. W1 deposed at page 4 of his deposition, that probation period of sub-staff is 6 months. In para 5 of the counter, the Management pleaded, that normally an employee is taken on temporary basis for two months, and he will be permitted to continue for four more months, and if there is permanent vacancy, if his work is satisfactory and if his antecedents are correct, then only his confirmation will be done. The workmen was undoubtedly allowed to continue from 25-2-1983 to 23-9-1983. This plea itself proves, that this worker was allowed to do the service for more than six months. He joined the duty on 15-3-1983 but he was removed from service w.e.f. 23-9-1983. Thus he worked for six months 8 days. In the appointment order Ex. W2 it was categorically stated, that his appointment will be regularised in the permanent cadre on satisfactory, performance, conduct etc. In page 5 of the counter, the Management admitted that it is true, that many of the employees who were interviewed along with this worker were subsequently made permanent. Therefore, there is no doubt about the fact, that this worker was recruited for a permanent post, that he completed his probation period of six months satisfactorily, and that he is entitled to be confirmed in the post of a permanent vacancy but for the termination order Ex. W6. In view of my findings on Points (i) to (iii) I hold, that the services of the worker need be confirmed w.e.f. 15-9-1983. This point is answered accordingly.

10. Point (v) :—It is not the case of the Management, that the worker is employed elsewhere ever since the termination of his services. The evidence of W.W1 is, that he is unemployed, that he did not do any work from the time of his removal as he could not secure any other job. In view of my above findings, and since the termination of the services is on the mere ground that he got higher qualification than those qualifications which the Management deems desirable, I am of the view, that the worker is entitled to be reinstated with all back wages and other attendant benefits.

11. In the result, the action of the Management of Andhra Bank, Hyderabad in terminating the services of Sri V. Suraiah, Sub-Staff, Andhra Bank, Hanumakonda Branch w.e.f. 23-9-1983 is not justified and he is entitled for immediate reinstatement with all back wages and other attendant benefits from 23-9-1983.

Award is passed accordingly.

Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 19th day of February, 1990.

D. RAMALINGA SWAMY, Industrial Tribunal
[No. L-12012/3/87-D.IV(A)]

Appendix of Evidence.

Witnesses Examined

for the Workmen :

W.W1 V. Suraiah.

Witnesses Examined

for the Management :

M.W1 V. Bhagarathi

Documents marked for the Workmen :

- Ex. W1 Photostat copy of the Interview call letter dt. 1-9-82 addressed to V. Suraiah by the Regional Manager, Andhra Bank, Warangal Regional Office.
- Ex. W2 Photostat copy of the appointment order dt. 25-2-83 issued to V. Suraiah by the Staff Manager, Andhra Bank, Central Office, Sultan Bazar.
- Ex. W3 Photostat copy of the Model form of the appointment letter of Sub-Staff.
- Ex. W4 Photostat copy of the Management letter No. 666/3/A3/431 dt. 2-4-83 allotting the staff code No. 17466 to V. Suraiah by the Staff Manager, Andhra Bank Central Office Hyd.
- Ex. W5 Photostat copy of the Hanumakonda Branch Manager Lr. No. 206/3/1240 dt. 21-9-83, recommending confirmation of V. Suraiah.
- Ex. W6 Photostat copy of the Management letter No. 206/3/1253, dt. 23-9-83 dispensing with the Services of V. Suraiah.
- Ex. W7 Photostat copy of the Representation dt. 22-7-86 made by K. Rama Rao, Joint Secretary, Andhra Bank Employees Union, Hyderabad to the Asstt. Labour Commissioner (C), Hyderabad with regard to termination of the services of V. Suraiah.
- Ex. W8 Photostat copy of the Minutes of conciliation Proceedings held on 22-12-1988 at Hyderabad in the Industrial dispute between the Management of Andhra Bank, Hyderabad and their workmen represented by Andhra Bank Employees' Union Hyderabad regarding alleged illegal termination of services of V. Suraiah, Sub-Staff, Andhra Bank, Hanumakonda Branch.

Documents marked for the Management

- Ex. M1 Photostat copy of the Form of Transfer Certificate of V. Suraiah.
- Ex. M2 Photostat copy of the Sub-Staff recruitment Evaluation sheet of V. Suraiah.
- Ex. M3 True copy of the VII Class Examination Certificate (Roll No. C. 197) issued to V. Suraiah by the Chairman VII Class Common Examination Board & District Educational Officer, Warangal.
- Ex. M4 Original Form of Transfer Certificate of V. Suraiah.
- Ex. M2(a) Photostat copy of Sub-Staff recruitment evaluation sheet of V. Suraiah.
- Ex. M2(b) Photostat copy of Sub-staff recruitment evaluation sheet of V. Suraiah.
- Ex. M5 Photostat copy of the list of applicants submitted to the Regional Manager, Andhra Bank Regional Office, P.B. No. 1 Hanumakonda, Warangal-I by the Dist. Employment Officer, Warangal.
- Ex. M6 Copy of the Recruitment of Sub-Staff procedure regarding.

Ex. M7 Letter dt. 27-9-1982 addressed to the Chairman and Managing Director, Andhra Bank Central Office, Hyderabad by the Regional Manager, Andhra Bank Warangal with regard to recruitment of Sub-Staff in Warangal.

Ex. M8 Order in S.E. No. 13/88 File No. A/1106/83, dt. 26-6-1985 on the file of the Court of the Authority U/s. 41 of A.P. Shops and establishments Act, 1966 and Asstt. Commissioner of Labour, Warangal.

D. RAMALINGA SWAMY, Industrial Tribunal

नई दिल्ली, 30 मार्च, 1990

का. प्रा. 1072—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ बरोडा के प्रबंधकों के संबंध निरीक्षणों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, आलपेयी के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-3-90 को प्राप्त हुआ था।

New Delhi, the 30th March, 1990

S.O. 1072.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Alleppey as shown in the Annexure in the Industrial dispute between the employers in relation to the Bank of Baroda and their workmen, which was received by the Central Government on the 26th March, 1990.

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL, ALLEPPEY.

(Dated this the 5th day of March 1990)

PRESENT :

SHRI K. KANAKACHANDRAN,

Industrial Tribunal

I.D. No. 67/89

BETWEEN

The Management of Bank of Baroda represented by the Chairman & Managing Director, Bank of Baroda, Central Office, 3, Walchand Hirachand Marg, Post Bag No. 10046 Ballard Pier, Bombay-400038 (2) Assistant General Manager (South Zone), Bank of Baroda, Zonal Office, 90, C. P. Ramaswamy Road, Madras-600018 (3) Regional Manager (Kerala) Bank of Baroda, P. B. No. 5095, Kissan Jyothi, I Floor, Ramaswamy Koil Street, Fort, Trivandrum-695023.

AND

The workmen of the above Bank represented by the General Secretary, Bank of Baroda Staff Union (Kerala), C/o. Bank of Baroda, Chengannur.

AWARD

This is an industrial dispute referred by the Central Government under Sec. 10(1) of the Industrial Dispute Act. In the reference order No. L-12011/99/88 D.II(A), dated 1-6-1989, the issue referred for adjudication reads as follows :-

"Whether the demand of the Bank of Baroda Staff Union (Kerala State) for discontinuance of violation of the provisions of an agreement signed by it with the Regional Manager, Bank of Baroda on 24-2-1978 in so far as it relates to the assigned duties of Daftaries and for payment of officiating allowance to two daftaries viz, S/Shri K. M. Kumarakurup and M. M. Ummer in the Bank of Baroda branches at Calicut and Tellichery for their having shouldered higher responsibilities on account of such violation is justified? If so, to what relief they are entitled?"

2. In the statement filed by the General Secretary of the union in this dispute it is stated that duties to be performed by the Daftaries are defined in the bipartite settlement of the year 1966. As per the agreement, over and above, the normal duties of a Peon, the Daftaries have to do the following work :

- (1) Simple binding of books registers.
- (2) Press copying.
- (3) Filing independently letters and other papers in respective files as per indications marked thereon.
- (4) Assisting in issuing stationery.
- (5) Stocking under guidance old records in orderly manner and assisting in giving them when required.
- (6) Undertaking the whole process of sorting, arranging, numbering, tallying the total number of and stitching the vouchers.

3. According to the union, the whole process of sorting, arranging, numbering, tallying and stitching of the vouchers are to be done only after finishing different types formalities in the respective sections such as preparation, checking and passing of the vouchers by the concerned Department Heads and posting of all the particulars in registers. Since the subordinate staff like Peons, Daftaries, Bill Collectors etc., are not qualified enough, they are not supposed to handle the vouchers in the course of operation in various departments. It is further stated that Peons are responsible only for sorting, arranging, numbering and tallying of vouchers for the purpose of stitching and keeping them as branch records. While reiterating their stand, the union has relied on a provision contained in a minutes of discussions between the union and the management on 24-2-1978. A copy of the minutes is also produced by the union along with the statement of their claims. In that statement the duties and responsibilities of the Daftaries at Quilon and other branches are clarified in the following manner :

"Daftaries will not be held responsible for the task of arranging vouchers at the stage when the vouchers are handled by the Clerk responsible for supplementary work or ledger posting".

4. Basing on the above understanding reached at the time of discussions, the union contends that such

a change by departing from the provisions contained in the bipartite settlement was agreed upon by the management and that resulted in change of duties to be performed by the Daftaries. It is alleged that in violation of the understanding reached between the union and the management, one of the workmen concerned in the dispute K. M. Kumara Kurup was served with a memo on 18-10-1985 directing him to arrange the vouchers at the stage wherein it is handled by a clerk. It is further stated that in none of the nationalised banks there is such a practice of doing the work by Daftaries as stipulated by the memorandum served to the workman concerned herein. It is also alleged that the management action is violative of mutual agreement and it is only an attempt to exploit the labour.

5. The statement filed by the management can be briefly stated as follows :—

6. Daftaries are, responsible for sorting, arranging, numbering, tallying the vouchers that are received by them for stitching. The contention that Daftaries need to do those work only after all the posting work by Clerks is not correct. The duties of the Daftaries are clearly stated in the bipartite settlement and it is provided therein that for the additional work done by the Daftary, he will be given a special allowance in addition to his normal salary. No occasion or situation are specified in a bipartite settlement for the performance of duties as Daftary. The services of the Daftaries are utilised at the branches as per the requirement. They have to do the work under the supervision and guidance of the clerk/official staff. The banks allot the work relating to the sorting of vouchers to the Daftaries in terms of the bipartite settlement and only by following the provision in the settlement the Daftaries at Calicut and Tellichery branches were asked to do the work. The contention that the Daftaries are not qualified to do the work of sorting of vouchers at any stage before the stitching is not correct. Since Daftary is also one among the peons, he has to work under the guidance and supervision of the clerical and other supervisory staff and therefore there is no question of any need for possessing higher qualification to do the work of Daftaries. It is true there was an agreement at the time of discussion on 24-2-1978 to settle some outstanding local issues. Such a minute was obviously signed due to some special circumstances prevailing at that time. Before the signing of All India Settlement on 3-10-1978, the allotment of work of Cash Peon/Daftaries, Additional Daftaries etc., at branches were not governed by any settlement and as a consequence of that local practices/arrangements were in vogue.

7. In view of the settlement reached on 3-10-1978 the understanding reached earlier on 24-2-1978 would have no force and any reliance on that agreement for making the present claim is unsustainable. Moreover in terms of para 4.2 of the settlement dated 3-10-78, the peon who is in receipt of special allowance of Daftary is required to do all jobs for which special allowance is payable. In all other branches except at Calicut and Tellichery the Daftaries are doing all the works in terms of settlement. Only by strictly following the memorandum of settlement, the Daftaries at Calicut and Tellichery were asked to perform the ad-

8. After the filing of respective statements by both sides, this dispute was posted for evidence and hearing. Later it was submitted on behalf of both sides that they are not adducing any oral evidence. Therefore I am relying only on the pleadings and the documents produced for the adjudication of this dispute. The documents produced by the union are marked on consensus as Ext. W1 and W2.

9. There cannot be any controversy on the status of the Daftaries in bank. The senior most peon working in a particular branch will be normally a Daftary. The nature of duties and functionings are clearly stated in the bipartite settlement of the year 1966. There is no dispute on that aspect also since the duties and responsibilities as elaborated in the above referred settlement are fully extracted in the statement filed by both union and the management.

10. In Chapter-V of bipartite settlement of 1966, the duties and functions of the Daftaries are incorporated. Apart from other functions, the Daftaries are to do the work relating whole process of sorting, arranging, numbering, tallying of voucher before those are taken for stitching. The provisions contained in the settlement do not say at what stage, the process of sorting would start. However from the wording given in the settlement, it is clear that the whole process of sorting is assigned to Daftaries. Now what the union says is that since the Daftaries are not qualified enough to do the whole process of sorting, they shall not be compelled to do sorting of vouchers at all stages. According to them, only at the final stage of the sorting, that is after the writing of supplimentaries and writing of Day book, they shall be asked to do the sorting work. On the other hand, the management says that the Daftaries are bound to sort out the vouchers only when work by the Clerks and the Supervisors are over in their respective sections.

11. The trump-card of the union is the minutes of discussion dated 24-2-1978 recorded pursuant to the discussion between them and the management's regional office at Madras. In that meeting several issues were taken up for consideration. One of the items for discussion was on the duties/responsibilities of Daftaries at Quilon and other branches. In that discussion it was clarified that the Daftaries will not be held responsible for the task of arranging vouchers at the stage when the vouchers were handled by clerk responsible for writing supplimentary and other connected works. According to the union, the insistence of the management to do the work of sorting in all stages by Daftaries is really against the spirit of understanding reached between the union herein and the regional office of the Management Bank at Madras. How far this contention is tenable; let us examine that.

12. The memorandum of settlement between the Bank of Baroda and All India Bank of Baroda Employees Federation has been produced by the union to substantiate their contention in this dispute and that is Ex. W2. The parties to the settlement are the management and sole collective bargaining agent of the workmen of Bank of Baroda. That settlement is dated 3-10-1978. The sub-clause (4) and

(5) of Clause 4 of the above settlement relate to the duties, terms and condition and of payment in the case of Daftaries. In Clause 4(4) it is provided that duties of Daftary presently shall be the same as stated in Appendix 'B' of the bipartite settlement of 1966 or as may be laid down from time to time.

13. The Clause 13(1) of the above settlement dated 3-10-1978 provides for superseding all previous understandings/agreement/settlements, practices that were in operation in the regions/zones of the Banks in respect of the matters covered under it. The union relies on this particular clause to say that the supersession is applicable only in relation to the matters covered by the settlement dated 3-10-1978. According to them, the settlement dated 3-10-78 does not say anything about the nature of duties to be performed by the Daftaries in various branches of the management bank. Hence they contend that the understanding reached on 2-4-1978 between the union concerned in the dispute and the regional office at Madras will continue to govern the matter without any superseding effect. The union would have been justified in contending so if the settlement dated 3-10-1978 does not say anything in relation to the duties to be performed by Daftaries. In clause 4(4) it is specifically stated that duties of the Daftaries shall be the same as stated in Appendix 'B' of the bipartite settlement of 1966 or as may be laid down from time to time.

14. The provision contained in the bipartite settlement can be nullified only through a settlement. Although there was some controversy in relation to the nature of duties to be performed by Daftaries, that was temporarily sorted out at the time of discussion with the union concerned in the dispute. It is clear that the effect of the understanding reached between the union herein and the Regional Office of the Bank at Madras was nullified by the subsequent settlement with the sole collective bargaining agency namely All India Bank of Baroda Employees Federation. If there was intention to protect the understanding reached between the union concerned herein and the regional office, it would have been specifically stated in the settlement dated 3-10-1978 itself. In the absence of any clause in the agreement concurring or ratifying the understanding reached between the Regional Office of the Management Bank and the union concerned herein, the stand of the union could not be justified. Therefore, according to me, the nature of duties to be performed by the Daftaries can only be in terms of the bipartite settlement of the year 1966. The union has not brought to the notice of this Tribunal any subsequent settlement other than the minutes of understanding dated 2-4-1978 to substantiate their contention that the provisions contained in Appendix 'B' of the bipartite settlement of 1966 in relation to the duties of Daftaries had been modified competently by any subsequent settlement. So long as that position continues, there is no merit in the contention raised by the union.

15. It is pointed out by the management that only in two branches, one at Calicut and other at Tellichery, the Daftaries there are reluctant to do their

work as per provision contained in bipartite settlement. In all other branches the duties and functions of the Daftaries are beyond any controversy. Of course, there are variations here and there and that is on account of the very cooperative work done by officers, clerks and peons together. Local adjustments with the employee in certain branches cannot be taken as a ground for flouting the specific provisions contained in the settlement with the collective bargaining agency in the management bank.

16. The union might be relying on Clause 4(4) of Ext. W2 settlement for claiming variations in the matter of duties to be performed by Daftaries. It is true that in Clause 4(4) of Ext. W2 it is stated that the duties of the Daftaries will be the same as stated in Appendix 'B' of the bipartite settlement of 1966 or as may be laid down from time to time. Possibly, the union is stressing on the second part of the above clause for vindicating their stand. According to them, the minutes contained in Ext. W1 regarding the modification of the duties to be performed by the Daftaries would be the one as contemplated under the second part of clause 4(4) of W2 settlement. Since the minutes of discussion cannot be given the sanctity of a settlement, any contention like that is not acceptable. Moreover the effect of such kind of understanding has been nullified by a separate clause contained in Ext. W2 settlement itself. It is specifically stated in Clause 13(1) of Ext. W2 settlement that it will supersede all previous understanding/agreements/settlements/practices that may be operating in regions/zones of the bank in respect of matters covered under the settlement. In view of the above terms of settlement the management had with the sole collective bargaining agency, no sanctity could be given to the minutes recorded in Ext. W1.

17. In the course of final hearing, this Tribunal directed the management to file a clarificatory statement regarding the actual method of working by Daftaries. Accordingly they filed a statement before this Tribunal on 12-1-1990. That statement is filed by Regional Manager of the management bank at Trivandrum. It is stated therein that the sorting of vouchers of all departments is done at a time at one point and it is done only for the purpose of writing supplementaries. The vouchers from different departments such as SB, CC, CA and IBDD etc., are collected by Peons (not Daftaries) and the same are deposited in a voucher box kept for the purpose. That box normally has different compartments for depositing of the vouchers from different departments separately. When all the vouchers are collected at one point the Daftaries will have to sort them out accountwise that is SB, CC, CA etc., and ledger folio-wise and the writing of supplementaries will be only after the checking by the officers. The Daftaries are not required to sort out the vouchers again at the stage when day book is written by the clerical staff. It is also stated that debit and credit vouchers are of different colours and they are easily identifiable also. Since a Daftary is the senior most peon of the branch having several years of service he is well conversant with the nature of work in relation to each type of voucher. Since they are well experienced, they are competent to sort out the vouchers. Since the management has explained in

details the nature of work to be done by the Daftaries, I do not think the lack of educational qualification will create difficulties in the matter of sorting of vouchers at the stage as explained by the management in their clarificatory statement. The provisions of bipartite settlement of 1966 regarding the nature of work to be done by the Daftaries are still continuing and no convincing reason is pointed out by the union to absolve the Daftaries from the responsibility of doing the whole process of sorting of vouchers.

18. In the present, an award is passed holding that Daftaries are bound to do the whole process of sorting work as explained well by the management in their clarificatory statement. In terms of the bipartite settlement of 1966, they are bound to do all works in connection with the whole process of sorting, arranging, numbering and stitching of vouchers.

The award is passed in the above terms.

K. KANAKACHANDRAN, Industrial Tribunal

[No. L-12011/99/88-D.II(A)]

APPENDIX

Witness examined on the side of the Management.

Nil

Witness examined on the side of the Workmen.

Nil

Exhibits marked on the side of the management.

Nil

Exhibits marked on the side of the workmen.

Ext. W1—Minutes of the Meeting held with Bank of Baroda Staff Union, Kerala at Madras on 24-2-1978.

Ext. W2—Memorandum of settlement between Bank of Baroda and All India Bank of Baroda Employees' Federation.

K. KANAKACHANDRAN, Industrial Tribunal

का. घा. 1073 :- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधन के संबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 1 धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 1073.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. I, Dhanbad as shown in the Annexure in the Industrial dispute between the employers in relation to the Dena Bank and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 107 of 1989

PARTIES:

Employers in relation to the management of Dena Bank,

AND

Their Workmen.

APPEARANCES:

For the Employers.—Shri Bikas Saha, Personnel Officer and Shri P.D. Lakhia, Asstt. General Manager, Calcutta Region of Dena Bank.

For the Workmen.—Shri P. N. Singh, Chairman, Dena Bank Employees Congress, and the concerned workman himself.

STATE : Bihar. INDUSTRY : Banking.

Dated, the 16th February, 1990

AWARD

The present reference arises out of Order No. L-12012/60/89-D.II(A), dated, the 18th August, 1989 passed by the Central Government in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute has been specified in the schedule to the said order and the said schedule runs as follows :

“Whether the action of the management of Dena Bank in terminating the services of Shri Babloo Lal was justified? If not, to what relief is the workman entitled?”

2. The dispute has been settled out of Court. A memorandum of settlement has been filed in Court. I have gone through the terms of settlement and I find them quite fair and reasonable. There is no reason why an award should not be made on the basis of terms and conditions laid down in the memorandum of settlement. I accept it and make an award accordingly. The memorandum of settlement shall form part of the award.

3. Let a copy of the award be sent to the Ministry as required under section 15 of the Industrial Disputes Act, 1947.

S. K. MITRA, Presiding Officer.

[No. L-12012/60/89-D.II(A)]

BEFORE THE PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1 DHANBAD

In the matter of Reference No. 107 of 1989 (Referred by the Ministry of Labour, Government of India, vide L/12012/6089/89-D2(A) dated 18th August, 1989)

BETWEEN

The Management of Dena Bank

(Through the Assistant General Manager, Calcutta Region 225-C, A.J.C. Bose Road, Calcutta-700020)

AND

Their Workman Shri Babloo Lal Co. Shri Guneswar Modak, line No. 5, Qtr. N/107, Kasidih, Jamshedpur.

TERMS OF SETTLEMENT

1. That the Bank agrees to take Shri Babloo Lal as Waterboy-cum-Sepoy on completion of the recruitment formalities viz. filling up of application forms, submission of educational qualification certificates, two Character Certificates from respectable person (not related to him), Medical Fitness Certificate and filling of Secrecy & Fidelity Bond.
2. That Bank shall handover the necessary application, secrecy & Fidelity Bond to Shri Babloo Lal today i.e. 16th February, 1990.
3. That Bank shall issue appointment Order Shri Babloo Lal within one month from this date i.e. 16th February, 1990 subject to completion of the forms/certificates immediately.

Dena Bank Supdt. Copy (Bihar State) 16-2-90.
P. D. LAKHIA, Asst. General Manager Dena Bank, Calcutta.

Babloo Lal, Workman
P. N. Singh, Chairman

Dated 16th February, 1990

का. भा. 1074.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबंध में निम्नलिखितों और उनके कर्मचारियों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम नं. 1 बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-3-90 को प्राप्त हुआ था।

S.O. 1074.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1, Bombay as shown in the Annexure in the Industrial dispute between the employers in relation to the UCO Bank and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR

COURT NO. I AT BOMBAY

Reference No. CGIT-19 of 1988

PARTIES:

Employers in relation to the Management of United Commercial Bank.

Versus

Their Workmen.

APPEARANCES :

For the Management.—No appearance.

For the Workman.—Shri Satish Sahastrabuddha,
Secretary of the Union.INDUSTRY : Banking STATE : Maharashtra
Nagpur, the 22nd day of February, 1990

AWARD.

The Central Government has referred the following industrial dispute between the Management of the United Commercial Bank and their Workmen to this Tribunal for adjudication under Section 10(1)(d) of the industrial disputes Act, 1947 (hereinafter for short 'the Act').

"Whether the action of the management of UCO Bank in terminating the services of Shri Chattawar, Sub-staff, Hindustan Lalpeth Branch with effect from 26-6-1986 is justified? If not, to what relief is the workman entitled?"

2. The United Commercial Bank Employees Union are representing Workman M. H. Chattawar in these proceedings. The Workman's case is that he was employed by the Management as a sub-staff (Peon) at their Hindustan Lalpeth Branch on 1-4-81. His grievance is that although he was doing the work of a regular Peon, he was being paid wages at the daily rate of Rs. 5/- upto 1984 and at the rate of Rs. 10/- thereafter. The Management terminated his services without any notice on 20-6-1986. According to him, this amounts to illegal retrenchment, as being violative of Section 25-F of the Act. Resultantly, he prays for a declaration that the action of the Bank in terminating his services is illegal and unjustified and for his reinstatement with full back wages and benefits provided for the sub-staff in the Bipartite Settlements.

3. The Management resist the claim on the following grounds :

- (a) M. H. Chattawar is not a member of the Union referred to in para 2 Supra and as such the Union who are representing him have no locus to do so.
- (b) He is not a Workman within the meaning of Section 2(s) of the Act, in-as-much as firstly he was not appointed as Peon and further the prescribed procedure for appointment of Peon was not followed in his case.
- (c) His appointment was purely on a casual basis and the contract of employment came to an end every day. Thus although it is admitted that he did work in the Bank during the period 1-4-1981 to 28-6-1986, the termination of his service does not amount to retrenchment, in view of the exception in Section 2(o)(bb).

4. When the case was called out for hearing on 19-2-1990, there was no appearance on behalf of

the Management. The notice of the hearing of the matter for that day at Nagpur has been duly served on the Management on 1-2-1990. Thus they had adequate notice of about 3 weeks. Thereafter, the matter was adjourned to 20-2-1990 for final hearing and disposal. On that day, also nobody turned up on their behalf. The reference has been pending for almost two years. In the circumstances, I am proceeding with the matter in the absence of the Management.

5. On behalf of the Workman, he and Chavan (WW-2), who was Deputy General Secretary of the United Commercial Bank Employees' Union for four years till 1988 and is at present Vice President, have given their evidence on oath. Their evidence is to the effect that the Workman Chattawar is a member of the Union and that Chavan is duly authorised to prosecute the proceedings. This evidence remains un rebutted. Accepting it, I hold that the Union has valid authority to represent the Workman and accordingly I repel the preliminary objection of the Management, adverted to at item (a) of para 3 supra.

6. There is no dispute between the two sides that Chattawar had actually worked in the Bank during the period 1-4-1981 to 19-6-1986. The real dispute is whether he was doing the work of a Peon. His evidence which has remained unchallenged, satisfactorily establishes that he was doing all the duties of a regular Peon, including important ones such as keeping in his custody the keys of the Bank premises, opening the premises in the morning and closing them in the evening, bringing tapal from the Post office, assisting the Cashier in remitting Cash from the Bank to the State Bank of India, cheque clearing work etc. He has stated that he was qualified for appointment as a Peon and that before his appointment, the Branch Manager had even interviewed him. He further adds that he had worked throughout the aforesaid period without any break. This evidence which remains un rebutted clearly establishes that Chattawar's appointment was a Peon in a permanent post and that his contract was not being renewed and terminated every day, as alleged by the Management. There is thus no substance in the Management's contention that Chattawar does not fall within the definition of Workman as given in Section 2(s) of the Act, or that he attracts operation of Section 2(o)(bb). The Workman has further affirmed that he was not given any retrenchment notice or paid compensation as required by Section 25-F. Indeed, under paragraph 495 of the Sastry Award, he should be deemed to have been confirmed as a Peon.

7. In the result, it is held that the action of the Management in terminating the services of the Workman with effect from 20-6-1986, is illegal and unjustified. The Management is directed to reinstate him with full back wages, Bonus and other benefits under the Bipartite Settlements. They shall also pay him his costs, which are quantified at Rs. 500/-. The payment of all these dues shall be made within 30 days of the publication of the Award in the official gazette. Award accordingly.

S. N. KHATRI, Presiding Officer

[No. L-12012/282/87-D.II(A)]

V. K. VENUGOPALAN, Desk Officer.

नई दिल्ली, 27 मार्च, 1990

का. भा. 1075.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत पेट्रोलियम कॉर्पोरेशन लि., बम्बई के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 1, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-3-90 को प्राप्त हुआ था।

New Delhi, the 27th March, 1990

S.O. 1075.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1, Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharat Petroleum Corporation Ltd., Bombay and their workmen, which was received by the Central Government on 23-3-1990.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 1 AT BOMBAY

PRESENT :

Justice S. N. Khatri, Presiding Officer.

Reference No. CGIT-56 of 1987

PARTIES :

Bharat Petroleum Corporation Ltd.

AND

Their Workmen.

APPEARANCES :

For the Management.—Shri R. S. Patil Advocate.

For the Workman.—Shri C. L. Dadhia, Advocate.

INDUSTRY : Petroleum STATE : Maharashtra

Bombay, the 16th day of March, 1990

AWARD

The Central Government has referred the following industrial dispute to this Tribunal under Section 10 of the Industrial Disputes Act for adjudication :

“Whether the action of the Management of M/s. Bharat Petroleum Corporation Ltd., in relation to its Bombay Refinery at Mahul, Bombay, in discharging Shri S. M. Anchan, a Leading Hand w.e.f. 2-9-85, is justified? If not, what relief the workman concerned is entitled to?”

2. The parties concerned have amicably settled the dispute and filed a Memorandum of Settlement. I have satisfied myself that all the parties have voluntarily agreed to the terms as recorded in the memorandum. I am further satisfied that the terms of settlement are just and fair to both sides, particularly to the workman, and further the cause of industrial peace. I accept the settlement and proceed to pass the award in terms thereof. These are as under :

1. The Corporation will pay to the workman Shri S. M. Anchan an amount of Rs. 1,09,672.50 (Rupees One Lakh Nine thousand six hundred seventy two and paise fifty only) in full and final settlement of all his claims including any claim for reinstatement, reemployment, granting other legal dues and the workman agrees that he will have no other claim of whatsoever nature against the Corporation. It is clarified that out of the above amount, the Corporation will pay to the workman Shri S. M. Anchan, Rs. 6,166.00 as his final legal dues (Salary, L.T.A., P.L.I, etc.) immediately after signing the above settlement.

2. It is clarified that out of the above amount as in Clause-1, the Corporation will pay to the workman Shri S. M. Anchan, Rs. 25,847.00 being the payment of gratuity immediately after signing the above settlement.

3. Out of amount mentioned in Clause-I above the Corporation will pay to the workman Shri S. M. Anchan, Rs. 77,659.50 being ex-gratia payment. The above amount will be given in two instalments, viz. first instalment of Rs. 38,829.75 on or before 25-03-1990 and second instalment of Rs. 38,829.75 on or before 30-04-1990, subject to income-tax if any.

4. It is hereby specifically understood by and between the parties that the payments mentioned hereabove will be treated as full and final settlement of all the claims, except Provident Fund, of the workman Shri S. M. Anchan who will have no claim of whatsoever nature against the Bharat Petroleum Corporation Ltd.

5. The Corporation will ensure payment of Provident Fund due to the workman from the B.P.C.L. P.F. Trust in accordance with the rules and regulation applicable thereto.”

3. Award accordingly. No orders as to costs.

S. N. KHATRI, Presiding Officer.

[No. L-30012/22/87-DIII(B)]

V. K. SHARMA, Desk Officer.

नई दिल्ली, 29 मार्च, 1990

का. भा. 1076.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ने धनलेखमी बैंक लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण बंगलूर के पंचपट को प्रकाशित करती है।

New Delhi, the 29th March, 1990

S.O. 1076.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Industrial Tribunal QUILON as shown in the Annexure in the industrial dispute between the employers in relation to the management of M/s. DHANALEKSHMI BANK LTD. and their workmen.

ANNEXURE

In the Court of the Industrial Tribunal, Quilon
(Dated this the 27th day of January, 1990)

Industrial Dispute No. 1/89

Between

The Chairman, M/s. Dhanalekshmi Bank Ltd.,
Central Office, Post Box. No. 9, Round, Trichur.

(By Sri B. S. Krishnan, Advocate, Ernakulam)

And

Sri C.S. Gopalakrishna Kurup, Sri. Ramavilasam
Bungalow, SRP Market P.O., Thazhava.

(By Sri H. B. Shenoy, Advocate, Cochin)

AWARD

In this dispute the issue referred for adjudication by Government of India as per Order No. L-12011/55/88 D.I.B. dated 5-1-1989 is :

THE SCHEDULE

"Whether the action of the management of M/s. Dhanalekshmi Bank Ltd. Trichur in dismissing the service of Sri. Gopalakrishna Kurup as clerk with effect from 3-9-1987 is legal and justified. If not to what relief the workman is entitled."

2. The management M/s. Dhanalekshmi Bank Ltd., Trichur dismissed Sri Gopalakrishnan Kurup, the workman in this case, after a domestic enquiry in which the worker was found guilty. According to the worker there was no proper and valid enquiry. Hence, as requested by the parties, validity of the enquiry was tried as a preliminary issue by this Tribunal. By order dated 26-12-1989 this Tribunal found that there was a proper and valid enquiry. The necessary facts involved in this case are stated in my earlier order which is extracted below for convenience.

ORDER

"Sri. Gopalakrishna Kurup, the workman in this case was dismissed from service by the management, M/s. Dhanalekshmi Bank Ltd. the workman challenges the correctness of his dismissal. He was served with a memo charges enumerating the following misconducts.

While you were working as a clerk at the Thazhava Branch of the Bank, you have committed the following acts of grave misconduct.

1. You deposited the title deeds of your immovable properties with Ernakulam Hospital Road Branch of the Bank with intent to create a security thereon to secure the dues of M/s. National Transport Corporation & Others to the Bank and mortgaged your properties by deposit of title deeds. Having so created a valid mortgage in favour of the Bank and knowing fully as an experienced clerk of the Bank that it

is binding on you as a mortgagor and that rights vested in the Bank as a mortgagee, you challenged in the court the correctness and regularity of such a valid transaction between you and the Bank, in the suit filed by the Bank on OS No. 205/78 for realisation of the dues. You raised false contentions and deposed falsely with a view to gain wrongfully and cause loss to the Bank. As an employee of the Bank you should have protected the Bank's interests or at any rate should not have attempted to challenge its validity and tarnish the Bank's image.

2. You purchased and assigned the share of the property inherited by Sri. Radhakrishnan, your brother on the death of your mother with a view to involve the Bank in multifarious legal proceedings and acted in a manner detrimental to the interest of the Bank.

3. All your above said dishonest acts are highly detrimental to the interest of the Bank and subversive of discipline, affecting the image of the Bank. You are, therefore, directed hereby to offer your explanation for the above said lapses and misconduct within seven days from the date of receipt of this memo. If no explanation is received from you within the period, it shall be deemed that you have no explanation to offer and further proceedings will be initiated.

4. Since the explanation submitted by the worker was not satisfactory, MW1, an officer of the management Bank was appointed as enquiry officer. The workman participated in the enquiry and the enquiry officer found him guilty of the charges. The management dismissed the worker from service on the basis of the enquiry findings. In his statement of objection filed by the worker before this Tribunal he pleads innocence of the charges and challenges the enquiry findings. The contentions of the worker are that he was not given sufficient opportunity to defend his case that the enquiry was violative of the principles of natural justice that enquiry officer was biased and that the enquiry proceedings were not faithfully and fairly recorded. The claim to for reinstatement in service with all benefits. According to the management, the enquiry was properly conducted, supported by legal evidence and the worker was guilty of charges as per the findings of the enquiry officer and that the punishment of dismissal is proportionate to the gravity of offence."

3. Since the validity of the enquiry was challenged, that question was considered as a preliminary issue. The enquiry officer was examined as MW1 and Exts. M1 to M3 have been marked on the side of the management. The workman has given evidence as WW1 and Exts. W1 to W9 have been marked on his side.

4. The first point of attack on the enquiry is that there was no valid enquiry affording sufficient opportunity to the workman to peruse documents of management and to adduce evidence. Further, principles of natural justice was totally unobserved. It is opposed by the management on the ground that the worker was served with two notices before the commencement of the enquiry on 5-2-1987 and 12-2-1987 and in the letter dated 5-2-1987, which was issued proposing to hold the enquiry, the worker was informed of

the details regarding witnesses of management and documents proposed to be relied on by management. It was specifically stated in that letter that the worker would be given sufficient opportunity to conduct his case by cross examining management's witnesses and examining his own witnesses after producing documents. He was called upon to furnish his documents and list of witness to the enquiry officer before 20-2-1987. Further, it was specifically stated in that letter that if he wanted to peruse any of the documents of management he could do so at the Central office of the management after fixing prior appointment and he was offered T.A. also for that purpose. The presenting officer of management has informed the enquiry officer as per his letter Ext. M1-B, dated 12-2-1987 that the workman has visited head office of management and perused the documents. This was informed to the delinquent by the enquiry officer as per his letter dated 12-2-1987. The details regarding additional documents proposed to be relied upon by management was also stated in that letter. The delinquent was afforded opportunity to peruse the additional documents at the Central office. It was further informed him to furnish his list of witness and documents before 20-2-1987. Ext. M1-B letter was replied by delinquent as per his letter Ext. M1-C dated 17-2-1987. In that letter he does not dispute the averment of presenting officer in his letter to enquiry officer dated 12-2-1987 regarding perusal of documents as per the first enquiry notice dated 5-2-1987 issued to him by the enquiry officer. For the perusal of second set of documents proposed to be relied on by the management, the worker wanted time and enquiry officer adjourned the enquiry to 10-3-1987. It is not disputed also. By letter dated 25-2-1987 the worker requested the enquiry officer to furnish him copies of the second set of documents. In that letter also the workman has no allegation that he was not permitted to peruse the first set of documents despite he called to the Central office. The allegation that he was not permitted to peruse the documents in seen made for he first time before this Tribunal only. During the course of enquiry also he has not made any such allegation. It is true that he has not claimed T.A. for his to and fro journey to the Central office. But in the absence of any allegation made by him that he was not permitted to peruse the documents at any point of time except before this Tribunal the non claim of T.A. alone cannot be considered as a ground to come to the conclusion that he was not permitted to the peruse the documents at the Central office. In these circumstances the only inference that can be made is that he went to the Central office and perused the documents as reported by the presenting officer as per his letter dated 12-2-1987 to the enquiry officer. The contention now put forward by the workman can therefore be an afterthought and unsustainable.

5. Regarding the second set of documents the case of management is that the enquiry officer had sent the copies of those documents to the delinquent as per his letter dated 28-2-1987. But the worker denied acceptance of any such letter. There is nothing on record to prove that such a letter was served on the workman. Even according to the enquiry officer that letter was sent by ordinary post while all other letters addressed to the workman were sent by registered post. No explanation is also forthcoming for not sending 970GI90—10

that particular letter, which is regarding a set of documents proposed to be relied on by the management, by ordinary post. In the absence of any supporting evidence it cannot be said that the worker was served with copies of the second set of documents as per letter dated 28-2-1987 of the enquiry officer. However, the enquiry officer has not permitted the management to rely on the second set of documents except the report dated 22-1-1981 of Sri Venugopal, Clerk, Central office, which was already included in the first set of documents. Hence the contention that the worker was not given opportunity to peruse the second set of documents is sustainable. But that does not vitiate the enquiry due to the reason stated above.

6. The next contention of the delinquent is that he was not given opportunity to furnish his list of witnesses and documents and to examine witnesses. As per the first enquiry notice dated 5-2-1987 and the second notice dated 12-2-1987 issued to him by the enquiry officer, the worker was informed to furnish documents and list of witnesses before 20-2-1987 i.e. before commencement of the enquiry. But he had not produced any documents or list of witnesses. His explanation is that he was not given copies of documents by the management and not permitted to peruse the documents. But as I have held in the earlier paragraph he was given sufficient opportunity to peruse the documents. Therefore his contention that he was not given sufficient opportunity to furnish documents and list of witness is unsustainable. He has participated in the enquiry fully and cross examined the witnesses of management and in token of his acceptance as correctly and truly recorded, he has put his signature on all pages of the enquiry proceedings from page 6 to the last. In the light of this attestation his contention that questions put by him to the management's witnesses, his objection in marking certain documents and objection in other stages were not truly recorded by the enquiry officer is thoroughly unfounded. Further case of the delinquent is that he was not given sufficient opportunity of defence his case by adducing evidence and the enquiry officer has hurriedly completed the proceedings in a short duration. As I have stated earlier by first enquiry notice dated 5-2-1987 the workman was called upon to furnish list of witness and documents. The list of management witness and documents proposed to be relied on by the management were made known to him by first notice itself. But he has not complied with it. Again by notice dated 22-2-87 also he was called upon to submit list of witness by the enquiry officer. But he did not pay any heed to that notice also. Even on the date of enquiry also he has not furnished any list or produced any witness or documents. Having fully participated in the enquiry and having failed to furnish list of witness even after getting an idea of the evidence proposed to be adduced after getting an idea of the evidence proposed to be adduced by the management, he failed to file list of witness or produce any witness. Having failed to do so he cannot now turn round and argue that he was not given opportunity to adduce evidence. Further on the date of enquiry he simply prayed for adjournment without stating any reasons. Since the management has completed their evidence and the workman was not prepared to adduce evidence without any reason MWI has completed the enquiry. MWI cannot there-

fore be blamed for completing the enquiry on that day itself. Hence the worker cannot contend that MW1 has hurriedly conducted the enquiry and that he was therefore biased. In this state of affairs I am not persuaded to accept the contention of the delinquent that principles of natural justice have been violated in the enquiry.

7. The workman challenges the validity of the enquiry on another ground that he was not given opportunity to be defended by a lawyer in the enquiry. At the outset I may state that no provision of law has been brought to my notice giving him vested right to be represented by a lawyer in a domestic enquiry. Further his reasoning for engaging a lawyer is that the presenting officer of the management was of a legally trained mind. It has come in evidence that he came to know that by virtue of the approach of the enquiry officer in the conduct of enquiry held on 10-3-1987. But it may be noted that the request of the delinquent for engaging a lawyer was made on 11-2-1987 i.e. long before the enquiry. Further, he was permitted by the enquiry officer to be defended by a representative of a registered Trade Union. But he did not make use of that opportunity. In this state of affairs the complain of the workman that he was not permitted to be defended by a lawyer is without force.

8. The delinquent has yet another case that the charges levelled against him are not misconduct as per service conditions and which have no bearing or connection with his duties as a Clerk in the Bank. The charges levelled against him in brief are that he deposited the title deeds of his property with the Bank for creating the title needs of his property with the Bank for creating equitable mortgage for the facilities enjoyed by M/s. National Transport Corporation, of which his brother Sri. Radhakrishnan is the Managing Director and fully knowing that it was binding on him as an experienced clerk of the Bank he challenged the correctness of such a valid transaction before court and raised false contentions to cause loss to the Bank. Further, he purchased and assigned the share of the property inherited by his brother on the death of his mother to defeat the interest of Bank and to involve the Bank in various legal proceedings and acted in a manner detrimental to the interest of Bank. His case is that he has not created any valid mortgage and he was forced to sign certain blank printed forms under threat of loss of job. It cannot be believed for a moment that an experienced bank employee as stated by three managers under whom the delinquent has worked will sign some blank papers. Further, he has not made any complaint to any body for getting his signature forcibly. Since the validity and genuineness of that document is pending decision before the High Court, I am not entering a finding at this stage. However, the charges levelled against him are definitely acts prejudicial to the interest of the Bank. His interest and the interest of the Bank were in conflict and his actions are against the confidence and fidelity reposed by the Bank on its employees. Hence these charges constitute gross misconduct as per paragraph 10.5 of the Bipartite settlement.

9. The point now remains to be considered is whether the findings of enquiry officer are supported by

legal evidence. Five witnesses of the Bank were examined before the enquiry officer and seven documents connected with the misconducts and subsequent civil suit were also marked. Three managers of the Bank under whom the delinquent has worked and one manager of the legal department of the Bank have given evidence in support of the case of management. There is no case for the workman that these witnesses are in enmity with him or that they have given evidence under threat of loss of job from the Bank. On a careful consideration of the depositions of witnesses and documents the enquiry officer has come to his conclusion that the delinquent has committed the charges levelled against him with a view to gain wrongfully and cause loss to the Bank which is detrimental to the Bank and subversive of discipline. The findings of the enquiry officer are supported by evidence and there is nothing wrong in the findings.

III. In view of the above finding the only question remains to be considered is whether the worker is entitled to any relief in the matter of punishment. On behalf of the worker the learned counsel for him vehemently contended that the management has not given him a second hearing in the matter of punishment as per clause 19.12 of the bipartite settlement and that copy of the enquiry report was also not sent to the worker. Further, second show cause notice was also not given to him before inflicting punishment. According to the learned counsel the disciplinary authority has not exercised what is contemplated by clause 19.12(c) of the bipartite settlement. Hence the punishment is liable to be quashed. According to the learned counsel the workman was not charge sheeted previously he being a handicapped person deserves relief in the matter of punishment. There is also a contention that there is a delay of sixteen months in issuing charge sheet after suspending him. On the other hand the learned counsel for the management contended that the disciplinary authority found the workman not trust worthy and found him guilty of the charges after a proper and valid enquiry. Further the management lost confidence in the worker and therefore the punishment imposed is not excessive and the workman is not entitled to any relief in the matter of punishment.

IV. The learned counsel for the worker placed reliance on a decision of the High Court of Karnataka in *State Bank of Mysore V. R. Shamanna* (1985) (1) LLJ 297) in support of his argument that the punishment in this case is liable to be quashed. In that case also the same point was involved. There the workman was not furnished with a copy of enquiry report before calling upon the employee to show cause against the proposed punishment. The court held that the punishment was vitiated. The court has also observed that the opportunity to be afforded to the delinquent to show cause against proposed punishment should be a reasonable opportunity and not an empty formality. In the case before me admittedly the copy of enquiry report was not given to the worker before issuing the show cause notice before imposing penalty through the worker specifically requested for a copy of the enquiry report. It is true that there was a second hearing. But the worker could not prepare his defence and file his objections against the proposed punishment after going through the enquiry report. He was not given a fair opportunity of hearing. Hence the punishment im-

posed in this case is liable to be quashed. However in the reported case (supra) the court after quashing the punishment reserved the liberty to the management to issue copy of the enquiry report to the workman and to afford opportunity for hearing and to pass fresh order. In the case before me though the punishment is unsustainable as stated above, it is not necessary to direct the management to pass fresh order as the matter is now dealt with in detail by this Tribunal. The workman after getting the copy of enquiry report has filed his explanation and both sides were heard at length. I shall therefore consider the propriety of punishment.

V. It is true that as per my order quoted above it was held that the action of the worker as per the charge sheet is against the confidence and fidelity reposed on the employee. But it is to be remembered that the charges levelled against him are that he deposited the title deeds of his property with the Bank for creating equitable mortgage for the facilities enjoyed by a company of which his brother is the Managing Director and fully knowing that the mortgage is binding on him, he challenged the correctness of such a valid transaction before the court to cause loss to the Bank. Further, he purchased and assigned the share of the property inherited by his brother from his mother to defeat the interest of Bank. As I have stated in the order above the validity and genuineness of that mortgage deed is pending decision of the High Court. It is true that by his action the recovery of the amount due for the Bank is delayed. But after the decision of the High Court the Bank can very well realise the amount with interest if the High Court decides the matter in favour of the Bank. It is pertinent to note that the workman is not holding a sensitive post in the Bank as that of a cashier or manager. He is only a clerk. It is also important to note that this is for the first time he has been charge sheeted for misconducts. As pointed out by the High Court of Kerala in Western Plywoods Ltd. Vs. Industrial Tribunal (1982 (ii) LLJ 113) the contention of the employer that he has lost confidence in the employee has to be weighed properly. Paragraph 14 of the judgment is quoted below to make the position more clear.

"In a case where the employer states that he has lost confidence in employee, the matter has to be weighed properly. The mere assertion of the employer that he has lost confidence cannot compel the Tribunal to refrain from passing an order of reinstatement. The Tribunal will have to consider whether the employer genuinely feels that it is risky to retain an employee in future or that it is hazardous or prejudicial to the interest of the industry to do so or is it a mere allegation made to send the employee out of employment".

In the light of the observation quoted above and in view of my above conclusion I am of opinion that the dismissal of the workman on the ground of loss of confidence is harsh and not justified.

VI. The learned counsel for the management would contend that one of the basic requirements of what an employer would expect to be satisfied from an employee is loyalty towards him. Further if confidence

is lost everything is lost. The learned counsel brought to the notice of this court a decision of the Supreme Court in Binny Ltd. V. The workman (1973 LAB. I.C. 1119) in support of his argument that when the employer has lost confidence in a workman he is not entitled to be reinstated. I may state that the facts involved in the above reported case and the facts involved in instant case are different. In the reported case the employer lost confidence in the workman when the workman availed special leave without wages on false representation and failed to resume duties though he was ordered to join immediately after cancelling the sanctioned leave. In the instant case what the workman mainly did was that he defended a suit for realisation of money from the company of which his brother was the Managing Director and also he denied the execution of the mortgage deed executed in favour of the Bank. The authenticity and genuineness of the mortgage deed are pending decision of the High Court of Kerala. Hence the above decision of the Supreme Court according to me is not applicable here.

VII. As I have stated above the workman was charge sheeted for the first time and that the authenticity and genuineness of the document executed by him is pending decision of the High Court. Apart from of these he is a handicapped person. The learned counsel for the workman submitted that he has canvassed Rs. 81,000/- as fixed deposit for the Bank after suspension. On an anxious consideration of all the facts and circumstances stated above especially the fact that the workman is a handicapped person I am of opinion that the punishment of dismissal is too harsh. The workman is out of employment since 3-9-1987. The mental agony suffered by him for this period, denial of backwages and an undertaking from him to the effect that he will not resort to such activities against the interest of Bank would be adequate punishment the misconducts proved against him.

VIII. In the result, I found that the action of the management Bank in dismissing Sri. Gopalakrishna Kurup from service is not justified. He is entitled to be reinstated in service without backwages and after an undertaking to the effect that he will not resort to such activities detrimental to the interest of Bank in future. His past services shall be counted for all purposes in future.

An award is passed accordingly

C. N. SASIDHARAN, Industrial Tribunal
[No. L-12011/55/88-D.I(B)]

APPENDIX

Witness examined on the side of the Management
MW1. Sri. A. S. Ramakrishnan.

Witness examined on the side of the Workman
WW1. Sri. C.S. Gopalakrishna Kurup.

Documents marked on the side of the management.
Ext. M1. Enquiry proceedings and report.
Ext. M1.A Order appointing MW1 as enquiry officer.
Ext. M1-B. Letter given to the enquiry officer by presenting officer on 12-2-1987.

Ext. M1-C. Letter given to enquiry officer by C.S.

Gopalakrishna Kurup on 17-2-1987.

Ext. M1-D. Office copy of reply letter issued to Sri. Gopalakrishna Kurup by enquiry officer on 28-2-1987.

Ext. M2. Office copy of memo charges issued to Sri. Gopalakrishna Kurup on 25-10-1986.

Ext. M3. Explanation submitted by Sri. Gopalakrishna Kurup to the management on 3-11-1986 in reply to Ext. M2.

Documents marked on the side of the Workmen.

Ext. W1. Office copy of letter issued to Sri. Gopalakrishna Kurup from the enquiry officer on 28-2-1987.

Ext. W2. True copy of letter sent to Sri. Gopalakrishna Kurup from the Central office manager (Personnel) of the Bank on 29-1-1988.

Ext. M3. True copy of letter sent by Sri. Gopalakrishna Kurup to enquiry officer on 10-3-1987.

Ext. W4. Order dated 20-7-1985 issued to Sri. Gopalakrishna Kurup suspending him from service.

Ext. W5. True copy of letter sent by Sri. Gopalakrishna Kurup to enquiry officer on 25th February 1987.

Ext. W6. Office copy of letter given to enquiry officer by Sri. Gopalakrishna Kurup on 10-3-1987.

Ext. W7. Letter issued to Sri. Gopalakrishna Kurup from the Central Office of the Bank on 29th January 1988.

Ext. W8. Office copy of letter sent to the disciplinary authority of the management Bank by Sri. Gopalakrishna Kurup on 17-6-1987.

Ext. W9. Copy of the minutes of conciliation proceedings held on 27-7-1988 (failure report).

C. N. SASIDHARAN, Industrial Tribunal

नई दिल्ली, 30 मार्च, 1990

का.प्र. 1077—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रिय सरकार मनमोहन ग्रामोण बैंक (ए.पी.) के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक प्रतिकारन हैदराबाद के नज्द को प्रकाशित करती है।

New Delhi, the 30th March, 1990

S.O. 1077.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Industrial Tribunal Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Manjira Grameena Bank and their workmen.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD.

PRESENT :

Sri. C. Rami Reddy, B.Sc., B.L., Industrial Tribunal.

Dated 2nd September, 1989.

Industrial Dispute No. 52 of 1986.

BETWEEN :

The Workmen of Manjira Grameena Bank (A.P)

and

The Management of Manjira Grameena Bank (A.P)

APPEARANCES :—

Sarvasri Y. Srirama Sarma and P.S.M. Rao, representatives for the Workmen.

M/s. K. Srinivasa Murthy and G. Sudha, Hony. Secretaries of the Federation of A. P. Chambers of Commerce and Industry for the Management.

AWARD

The Government of India, Ministry of Labour by its Order No. L-12011/3/86-D.II(A) dated 16-12-1988 referred the following dispute under Section 10(1)(d) & (2A) of the Industrial Disputes Act, 1947 between the employers in relation to the management of Manjira Grameena Bank (A.P) and their workmen to this Tribunal for adjudication :

"Whether the action of the Management of Manjira Grameena Bank in excluding Sundays and Holidays for the purpose of payment of wages in respect of Temporary Part-time sweepers with effect from 1-6-1985 is justified? If not, to what relief are the workmen entitled?"

This reference was registered as Industrial Dispute No. 52 of 1986 and notices were issued to the parties.

2. The Petitioner Union filed a claim statement and took the following pleas. The workmen of the Manjira Grameena Bank are the members of the Manjira Grameena Bank Association, a registered Trade Union affiliated to A.P.B. R.B.E.A. The workmen concerned of the Bank are having various length of service in the Bank. Some of them are working from the time of inception of the Bank in the year 1984. They are designated as Temporary or Part Time Sweepers and they are paid daily wages. At all branch offices where Part Time Temporary Sweepers are engaged, no other employers from Group D service or Class IV or Sub-Staff is posted. All the jobs of the nature of Class IV Sub-staff are attended to by the temporary Part Time Sweepers alone and part time wages are paid to them for the full time work done by them. Their

services are not regularised though they have been working for the last five years without any service length. The Respondent Bank has stopped payment of wages for Sundays and Public holidays to the temporary part time Sweepers w.e.f. 1-6-1985 vide Staff Circular dt. 18-6-1985 in the name of wage revision. The Bank used to pay wages for Sundays and Public Holidays prior to the date of the staff Circular dated 4-3-1983 of the said Bank. This change in service condition brought out by the Management while nullifying the effect of wage revision, has resulted in the break in services of the temporary part time sweepers at the end of every week and made their lives more miserable and their services uncertain. The Bank has not even cared to serve a notice on the workmen as to the change in service condition before hand as required under Section 9-A of the Industrial Disputes Act and effected the change abruptly by a unilateral decision. The Bank has thus violated the provisions of the I.D. Act. Keeping the employees temporary, is arbitrary and against the Bank's own service rules, Regulation 4(2) which started that the temporary employees cannot be appointed for more than 90 days and fixing poor wages not commensurate with the work assigned is exploitative and discriminatory. The National Bank for agriculture and rural development in its letter to one of the Regional Rural Banks has asked to fix daily wages at 1/30th of the wages and allowances applicable to the group-D employees of the State Government. The Manjeera Gramscena Bank should therefore fix the wages around Rs. 27.00 a day, approximate daily average salary of Class IV employees of the State Government. It is therefore prayed that the Hon'ble Tribunal may be pleased to direct the Respondent Bank to pay the wages to the workmen concerned for Sundays and public Holidays and also at the revised rates and with arrears and to pay the wages at least at the rates advised by the NABARD that is about Rs. 27.00 a day as against Rs. 12.00 maximum a day being paid at the Bank presently.

3. The Respondent Bank filed a counter and raised the following contentions. The allegations that the workmen was working from inception on daily wages basis is not correct. Those people who are appointed in permanent posts were regulated by the Regulations given by the Board with regard to their service and salary. It is pertinent to note that the workmen who are appointed on temporary part time basis are paid daily wages according to the nature of work they are discharging. There is no full time sweepers posts in the Bank. The very object of the Bank is to have a minimal establishment expenditure. In certain Branches there may be one Clerk and one Officer. There are no full time sweepers for the rural banks. No sweeper is working in any of the Branches as full time sweeper throughout the day. As per the Government of India directions, all branches of Regional Rural Banks are not eligible for full time sweepers and employees have to be engaged according to workload. The workmen were appointed as temporary part time sweepers in the permanent employees service conditions are not applicable to them. They are paid daily wages for the day they work and so they are not entitled to claim wages for Public

Holidays and Sundays. If any mistake has been committed by paying on Sunday and Holidays, that amount was paid as ex-gratia to the workmen and they are having no right to claim when they were not discharging duties. The Government of India in their letter dated 27-9-1988 directed all Regional Rural Banks to appoint Messengers/Sweepers on daily wages keeping in view the local conditions and requirements. Further the Government of India in their letter dt. 16-12-1980 advised Regional Rural Banks to appoint part time messengers on daily wages basis. In the payment of wages to such employees there is no practice in Andhra Pradesh paying wages to the temporary employees on Sundays and Holidays. The Government of India in its letter dt. 28-5-1981 directed the Regional Rural Banks not to engage sweepers on regular basis. It is pertinent to submit that the Management took a decision not to pay on Sundays and Holidays to part time sweepers. It has taken care to see that there is no financial loss to the workmen and the daily wage has been increased to compensate the said loss. Though the workmen are not working on Sundays that amount has been compensated by increasing the daily wage Re. 1.00 per day. Temporary staff are not confined all the time in the Bank, and they are at liberty to do any work outside any time including on public holidays and Sundays. As there is no change of service condition, the question of issuing notice under Section 9A does not arise. It is submitted that according to Board Regulations those categories which have been specified for them alone with regard to permanent and temporary employment is regulated and not for the sweepers who are not mentioned in the said categorisation. Sweeping itself being temporary in nature. It is submitted that the wage paid to the workmen is more when compared with the workmen who are working in similarly placed local authorities. So far as the claim No. 1 is concerned the Management is well within its right not to pay for the workmen who are not working on Sundays and public holidays as they are temporarily posted on daily wage. Hence the claim may be refused.

4. The point for consideration is whether the action of the Management of Manjeera Gramscena Bank in excluding Sundays and Holidays for the purposes of payment of wages in respect of Temporary Part-time sweepers w.e.f. 1-6-85 is justified? If not, to what relief are the workmen entitled?

5. It may be stated that the workmen were not represented on 27-6-1989, 19-7-1989, 4-9-1989 and 25-8-1989. So on 25-8-1989 the Management examined one P.S. Prabhakar who is working as Manager (Personnel) in Manjeera Gramscena Bank Branch, Sangareddy, and marked Exs. M1 to M3. He deposed that the Rural Banks are established in rural places that the staff for the Bank consist of an Officer and a Clerk and that the workload is very low and that temporary sweepers are appointed as per the three Circulars dated 27-9-1980, 16-12-1980 and 27-5-1981 marked as Ex. M1 to M3 respectively and that they are engaged on daily wage on hourly basis and that no work is extracted from them on Sundays and Holidays, since the Banks are closed on those days. Further he deposed that the payment of wages to the Part time swee-

pers is also referred to the National Tribunal in I.D. No. 1 of 1988 as one of the items. In the Circular dated 27-9-1980 (Ex. M1) the Ministry of Finance advised the Chairman of all Regional Rural Banks to appoint messengers on daily wages and to pay the wages with reference to hours of work done in a day. In the letter dated 16-12-1980 (Ex. M2) the Ministry of Finance asked the Chairman of the Regional Rural Banks to appoint Part time Messengers on purely daily wages and the wages to be determined with reference to the hours of work put by them. Further the Chairman of the Regional Rural Banks was asked to ascertain the manner of payment of wages on Holidays/Sundays and the admissibility of benefits like gratuity, medical reimbursement, bonus and uniforms etc. in respect of daily wage employees working in the State Government and to the extend the said benefit, to the daily wage messengers in the Bank with the approval of the Directors. There is no evidence on record to show that the Management ascertained the payment of wages by the State Government to the daily wage employees working in the State Government and that the Management is paying the said wages to the daily wage messengers working in the Banks on par with Part time Sweepers working in the State Government. However it is said that the Part time sweepers working in the State Government are paid lumpsum amount per month. In my view the daily wage employees working in the Banks shall be given the same benefit which the daily wage employees are getting under State Government, in case the wages paid to part-time employees of the State Government are beneficial to them. Thus an Award is passed directing the Management to pay lumpsum amount per month to the part-time sweeper w.e.f. 1-6-1985 on par with the wages paid to the part time sweepers by the State Government with effect from in case the wages paid to part time employees of the State Government are beneficial to Part Time sweepers working in the Bank and if not the present system of payment of wages shall be continued.

Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and seal of this Tribunal. this the 2nd day of September, 1989.

C. RAMI REDDY, Industrial Tribunal.
[No. L-12011/3/86-D.II(A)]

Appendix of Evidence.

Witnesses Examined
for the Workmen.

NIL

Witnesses Examined
for the Management:
MW1, P.S.
PRABHAKAR

Documents marked for Workmen:

NIL

Documents marked for the Management:

Ex. M1 True Copy of the letter dt. 27-9-80 of the Under Secretary to the Govt. of India to the Chairman, All Regional Rural Banks with regard to appointment of Messengers in Regional Rural Banks.

Ex. M2 True Copy of the letter dt. 16-12-80 of the Director Govt. of India, Ministry of Finance Department of Economic Affairs (Banking Division) to the Chairman, of all Regional Rural Banks with regard to Ministry's letter dt. 27-9-80.

Ex. M3 True Copy of the letter dt. 28-5-81 of the Under Secretary to the Govt. of India, Ministry of Finance, Department of Economic Affairs (Banking Division) to the Chairman, All Regional Rural Banks with regard to appointment of Sweepers/Messengers in the Regional Rural Banks.

C. RAMI REDDY, Industrial Tribunal

का. आ. 1078—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अधीन में केन्द्रीय सरकार, बनारस स्टेट बैंक लि. के प्रबंधकों के संघर्ष नियंत्रकों और उनकी कार्यवाहियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचपट को प्रकाशित करता है।

S.O. 1078.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Benaras State Bank Ltd. and their workmen.

ANNEXURE

Before Shri Ajan Dev Presiding Officer Central Government Industrial Tribunal Kanpur.

Industrial Dispute No. 183 of 1987

In the matter of dispute between :

Dy. General Secretary
All India Benaras State Bank Employees Union
C/o Benaras State Bank Limited
80 Feet Road Kanpur.

AND

The Assistant General Manager(P)
Benaras State Bank Limited D-52
Luxa Road, Benaras.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-12012/72/87-D, IV(A) dated 4-12-87, has referred the following dispute for adjudication to this Tribunal :

"Whether the management of Benaras State Bank Limited, was justified in not granting the Daftari Allowance to Shri Sudhir Mehrotra w.e.f. 1-9-85 as he was the seniormost in the city seniority. If not, to what relief the concerned workman is entitled to?

2. Today an application has been moved by Shri D.S. Saxena in his capacity as Dy. General Secretary, of All India Benaras State Bank Employees Union on behalf of the said union withdrawing the case. The contents of the application have been duly verified before me by Shri Saxena.

3. In view of the application made today, the references answered against the workman and he is held entitled to no relief.

4. Reference is answered accordingly.

ARJUN DEV, Presiding Officer

[No. L-12012/72/D.IV(A)]

का.प्र. 1079—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में केन्द्रिय सरकार वैशाली ग्रामीण बैंक के प्रबंधन के संबंध निवीजों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रिय सरकार औद्योगिक अधिकरण नं. 2 धनबाद के पंचाट को प्रकाशित करता है।

S.O. 1079.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the following award of the Central Government Industrial Tribunal No. 2 Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Vaishali Kshetriya Gramin Bank and their workmen.

ANNETURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri I. N. Sinha, Presiding Officer.
Reference No. 30 of 1988

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947.

PARTIES :

Employers in relation to the management of
Vaishali Kshetriya Gramin Bank and their
workmen.

APPEARANCES :

On behalf of the workmen : Shri H. P. Karan,
General Secretary.

On behalf of the employers : Shri D. Sharma,
Senior Manager.

STATE : Bihar. INDUSTRY : Banking.

Dated, Dhanbad, the 4th April, 1989.

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to the then Central Government Industrial Tribunal No. 3, Dhanbad. But subsequently vide Ministry's Order No. S-11025/7/D. IV(B) dated, the 31st December, 1987 the said reference was transferred to this Tribunal.

THE SCHEDULE

"Whether the action of the management of
Vaishali Kshetriya Gramin Bank in termi-
nating the services of Shri Dharam Nath
Prasad, Part Time Messenger-cum-Sweeper

posted at Pupri Branch, District Sitamarhi
of the Bank with effect from 25-11-83 is
justified? If not, what relief the work-
man concerned is entitled?"

The case of the workmen of Vaishally Kshetriya Gramin Bank Staff Union is that the concerned workman Dharam Nath Prasad worked as part time Messenger-cum-Sweeper having no service condition at Pupri Branch of Vaishally Kshetriya Gramin Bank with effect from 5-3-82. After satisfactory performance of his duties, he was appointed by the management vide appointment letter dated 23-3-83. After appointment the concerned workman discharged his duties with sincerity and there was no complaint, at any stage against him. He was orally forbidden by the Manager of Pupri Branch of the Bank to discharge his duties and marked his presence in the attendance register with effect from 25-11-83. He was not paid his salary for the month of September and October, 1983 although the concerned workman was performing his duties. The Manager of the Pupri branch orally informed the concerned workman in November, 1983 that his services stood terminated. On hearing the said arbitrary decision of the management the union took up the matter with the Chairman vide letter dated 28-11-83. The services of the concerned workman was terminated by the management without any notice and without assigning any reason to him. On the above facts it is prayed that the management be directed to reinstate the concerned workman with all back wages from the date of termination of the services.

The case of the management is that the concerned workman Dharam Nath Prasad was engaged to work at Pupri Branch of Vaishally Kshetriya Gramin Bank purely as part time Sweeper-cum-Messenger on daily wage basis during the year 1982-83. The concerned workman was irregular and his services were unsatisfactory. The elder brother of the concerned workman was one Shri Amar Nath Prasad who was working in the same branch as authorised collection Agent for Mini deposit scheme. Shri Amarnath Prasad had misappropriated several thousands of bank's money collected from the public for which a Criminal case was lodged against Shri Amarnath Prasad. The case of the management further is that the Constituents of the Bank reported that the concerned workman was disclosing secrecy of the depositors of the Bank which has created resentment amongst the clients of the branch. The concerned workman was disclosing the secrecy of the depositors to benefit his brother to mobilise more business from those constituents which was detrimental to the interest of the Bank as well as its constituents. A person employed temporarily on daily wage or recruited on special contract is exempted from the Regulations. The concerned workman had violated the rules of the Bank by absconding himself from the Pupri Branch office without notice since 10-9-83, which will be apparent from the Attendance Register.

The point for decision is whether the termination of the services of the concerned workman who was a part time Messenger-cum-Sweeper is justified.

The workmen examined the concerned workman WW-1 Dharamnath Prasad and the management examined MW-1 Shri Ashoke Kumar, Branch Manager of Pupri branch. The documents of the workmen have been marked Ext. W-1 to W-3. No document was exhibited on behalf of the management.

Admittedly, the concerned workman Shri Dharamnath Prasad was working as part time Messenger-cum-Sweeper at Pupri Branch of Vaishally Kshetriya Gramin Bank. Ext. W-2 dated 23-5-83 is a letter of appointment issued to the concerned workman by Vaishally Kshetriya Gramin Bank, Head Office, Kalambagh Road, Muzaffarpur. Ext. W-2 shows that the concerned workman had applied for his appointment and his application was dated 9-5-83 and on the basis of the said application of the concerned workman, he was engaged as purely part time Messenger-cum-Sweeper on daily wage basis from 1-6-83. The terms and conditions of his appointment are set forth in the said appointment letter. He was to be paid the proportionate daily wages calculated @ Rs. 1.14P. per hour for the duration he was engaged and he was also to be paid wages for holidays under N.I. Act including Sunday as if the day was working day. He was also entitled to casual leave of 12 days and medical leave of 12 days per year. It was also the condition of his services that he must obtain prior sanction of the Manager before going on leave and that any unauthorised absence will be deemed abandoning the services. His wages were to be paid once a month on the last working day in a month. It also provides that Vaishally Kshetriya Gramin Bank (Staff) Services Regulation was not applicable in the case of the concerned workman. Therefore there is no doubt that the concerned workman had been appointed by the Head Office of Vaishally Kshetriya Gramin Bank from 1-6-83 on the terms and conditions set forth in the appointment letter Ext. W-2 as part time Messenger-cum-Sweeper on a daily wage basis.

WW-1 is the concerned workman. He has stated that he was working in Pupri Branch of Vaishally Kshetriya Gramin Bank as part time Messenger on daily wages since 5-3-82, by the Manager of Pupri Branch of the Bank. It will also appear from his evidence that a letter was issued to him from the Head Office of the said Gramin Bank appointing him as Messenger-cum-Sweeper on part time basis. He has referred to the letter of his appointment Ext. W-2. He has stated that on 25-11-83 his work was stopped by the Branch Manager of Pupri Branch without giving him any reason and without giving him any notice prior to the stoppage of his work. He also claims that his 2 months wages which was due was not paid by the Manager. MW-1 Shri Ashoke Kumar was posted as Branch Manager at Pupri Branch of Vaishally Kshetriya Gramin Bank from June, 1983 to January, 1984. He has stated that the concerned workman was working as a Messenger-cum-Sweeper in Pupri branch of the Bank since before his posting at that place. He has further stated that near about September 1983 the concerned workman was removed from his work. He has tried to give reasons for the stoppage of the concerned workman from September, 1983. According to his evidence formerly Amarnath Prasad brother of the concerned workman, was working as Messenger-cum-Sweeper in the Pupri Branch prior

to the appointment of the concerned workman. Subsequently Amarnath Prasad became Agent of Gramin Mini deposit and thereafter Amarnath got the concerned workman appointed as Messenger-cum-Sweeper in his place. MW-1 has stated that some fraud had been committed in the Mini deposit scheme by Amarnath and therefore Amarnath fled away. MW-1 wanted the concerned workman to return back the papers in connection with Mini deposit scheme in possession of Amarnath but the concerned workman did not help him in producing those papers and subsequently the concerned workman and his mother produced the paper in respect of the small deposit scheme of Amarnath and cash of Rs. 1500 which had been collected by Amarnath out of about Rs. 6000 of collection made by Amarnath in the small deposit scheme at the instance of the Chairman of the Gramin Bank when he had come to inspect Pupri branch. MW-1 has further stated that the concerned workman was also disclosing the secret of the banks transaction to the different people. He has stated that the concerned workman had got him threatened through some outsider and that there was also public complaint against the concerned workman. He has stated that for all these reasons the concerned workman stopped coming to his work and that he had not stopped him from duty. The fact that the concerned workman had himself stopped coming to his duty does not find support when we refer to Ext. W-3 dated 15-9-83. Ext. W-3 is a letter from the G.M. of Vaishally Kshetriya Gramin Bank Head Office to the Branch Manager Pupri. It refers to the appointment letter Ext. W-2 dated 23-3-85 on the basis of which the concerned workman was appointed by the Head Office of Gramin Bank as part time Messenger-cum-Sweeper. It appears that the concerned workman had written some letter to the General Manager that he has been stopped from work from Pupri branch for his late attendance. The General Manager made some queries to show that the concerned workman was appointed by the Head Office and as such his stoppage of work by the Branch Manager was not justified and the General Manager had asked the Branch Manager to allow the concerned workman without any delay to join his duty. MW-1 has completely shown his ignorance about the receipt of Ext. W-3 at the Pupri branch office although the letter was sent on 15-9-83 during which time MW-1 was posted at Pupri branch as Branch Manager. It is obvious that MW-1 is trying to shelve his responsibility as the concerned workman had not been allowed to join his duties after receipt of the letter Ext. W-3. It will also appear from the evidence of MW-1 that MW-1 had got another person appointed temporarily in place of the concerned workman after a week of the stoppage of the work of the concerned workman. It appears from his evidence that the said person worked for 27 days and thereafter another person was appointed who worked for about 15 to 20 days and thereafter the person who had worked previously joined the work on the orders of the Headquarters but continued to work as Messenger-cum-Sweeper. Ext. W-1 to W-1/33 series are 34 payment vouchers of the Vaishally Kshetriya Gramin Bank by which the wages were paid to the concerned workman on monthly basis for the days worked by him. These are from 5-3-82 to 7-9-83. Thus

the payment vouchers shows that the concerned workman was working on daily wages since before his appointment as a part time Messenger-cum-Sweeper from 1-6-83 and there is record to the effect that the concerned workman was working in Pupri branch since 1-1-82 although the concerned workman had got a regular appointment letter to work as a part time Messenger-cum-Sweeper on daily wage basis from 1-6-83 vide Ext. W-2 he was already working in Pupri branch of the Bank since 1-1-82 and as such it cannot be said that he had worked in the Bank only from 1-6-83 to the date of his stoppage of work. Ext. W-1 service shows that the workman was not paid after the month of August, 1983.

Admittedly no notice or any cause in writing was given to the concerned workman as to why his work was stopped. The evidence of MW-1 shows that there was some allegation of misconduct on part of the concerned workman and that was the reason of the stoppage of the concerned workman. It is no doubt stated by MW-1-- that the management did not stop the work of the concerned workman and that the concerned workman himself stopped coming to his duty, it is evident from Ext. W-3 that the concerned workman had not stopped himself from duty but he was stopped by the Branch Manager orally and as such the concerned workman had made a complaint at the Head Office and therefore the General Manager of the Head Office of the Bank had directed the branch Manager, Pupri branch to allow the concerned workman to join his duties at once but as stated by WW-1 the Branch Manager did not allow him to join his duty. In the terms and condition of the appointed letter Ext. W-2 itself it is stated that Vaishally Kshetriya Gramin Bank (Staff) Service Regulation will not be applicable in the case of the concerned workman. The Staff Regulation of Vaishally Kshetriya Gramin Bank, 1980 in Section 1(3)(a) provides that the Regulation of Vaishally Kshetriya Gramin Bank (Staff) Regulation will not apply to a person employed temporarily on daily wages or to a person recruited on a special contract. Even though the said regulation will not be applicable in the case of the concerned workman, it will not be legitimate on the part of the management to assert that it could terminate the services of the concerned workman without even following the principles of natural justice. According to the evidence of MW-1 as I have already stated above, the allegation is of misconduct against the concerned workman. The management therefore should have framed chargesheet against the concerned workman for removing him from his work as he was being removed on the ground of misconduct. The management did not issue chargesheet to the concerned workman. On the other hand the Head Office of the Bank had directed to the Branch Manager of Pupri to allow the concerned workman to join his duty as the stoppage of his duty by the Branch Manager was not proper in view of the fact that the concerned workman had been appointed from the Head Office. The evidence discussed above indicates that it was the Branch Manager of Pupri branch who was taking different grounds regarding the stoppage of the work of the concerned workman. WW-1 has stated that on 25-11-83 his work

was finally stopped by the Branch Manager of Pupri branch, I hold therefore that the stoppage of the work of the concerned workman was not justified from 25-11-83.

In the result, I hold that the action of the management of Vaishally Kshetriya Gramin Bank in terminating the services of the concerned workman Shri Dharamnath Prasad Part time Messenger-cum-Sweeper posted at Pupri of the Bank with effect from 25-11-83 is not justified. The management is directed to reinstate the concerned workman with effect from 25-11-83 and to pay his wages as if he had worked although since the stoppage of his work within one month from the date of publication of the Award.

This is my Award.

I. N. SINHA, Presiding Officer.

[No. S-11025/7/87-D.IV(B)]

नई दिल्ली, 4 अप्रैल, 1990

का. प्रा. 1080—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संलग्न नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण व श्रम न्यायालय नं. 1 बम्बई के पंचपट को प्रकाशित करता है, जो केन्द्रीय सरकार को 23 मार्च, 1990 को प्राप्त हुआ था।

New Delhi, the 4th April, 1990

S.O. 1080.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby published the following award of the Central Government Industrial Tribunal cum-Labour Court No. 1, Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of India, and their workmen, which was received by the Central Government on 23-3-90.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT NO. 1 AT BOMBAY

(PRESIDING OFFICER : JUSTICE S. N.

KHATRI)

Reference No. CGIT-42 of 1989

PARTIES

State Bank of India.

V/S

Their Workmen.

APPEARANCES :

For the Management : Shri V. M. Laulkar,
Office Manager.

For the Workman : No appearance.

INDUSTRY : Banking STATE : Maharashtra
Bombay, the 19th day of March, 1990

AWARD

The Central Government has referred the following industrial dispute to this Tribunal under section 10 of the Industrial Disputes Act, 1947, for adjudication :

"Whether the action of the management of State Bank of India, Local Head Office, Bombay, in deducting the overtime wages from the salary of April and May, 1985 of the following Subordinate Staffs, which were already paid to them for working on Public Holiday i.e. on 1st and 3rd November, 1984, is legal and justified? If not, to what relief the subordinate staffs are entitled to?"

1. Shri A. S. Mane—Watchman
2. Shri B. B. Kadam—Watchman
3. Shri S. S. Kapose—Watchman
4. Shri Pratap Singh—Sweeper
5. Shri D. R. Gangude—Electrician
6. Shri Tara Singh—Watchman
7. Shri R. J. Khanvilkar—Watchman
8. Shri K. S. Negi—Watchman
9. Shri N. K. Waghela—Sweeper
10. Shri R. S. Banwarilal—Sweeper
11. Shri N. Prabhu—Sweeper.

2. This case was adjourned as many as 10 times to enable the Workmen to file their Statement of Claim. In spite of being served with repeated notice, they have not cared to appear before the Tribunal to file their Statement of Claim. It appears that they are not interested in pursuing the claim. The Bank opposes the claim. In absence of any materials it is not possible to record a finding that the alleged action of the Management was illegal or unjustified. Eventually, the Workmen are not entitled to any relief. Award accordingly. No orders as to costs.

S. N. KHATRI, Presiding Officer.

[No. L-12011/16/89-IR-B. III]

S. C. SHARMA, Desk Officer.

नई दिल्ली, 9 अप्रैल, 1990

का. आ. 1081—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में केन्द्रीय सरकार छत्रसाल ग्रामिण बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण व श्रम न्यायालय, कानपुर को प्रकाशित करती है।

New Delhi, the 9th April, 1990

S.O. 1081.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Central Government Industrial Tribunal Cum-Labour-Court Kanpur, as shown in the Annexure in the industrial dispute between the employers in relation to the management of Chhatrasal Gramin Bank and their workmen.

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, KANPUR

Industrial Dispute No. 2 of 1985

In the matter of dispute between

Krishna Kant Sharma,
S/o Sh. Ram Kumar Sharma,
Gram & Post Office Churiya Solampur,
Distt. Jalaun.

AND

The Chairman,
Chhatrasal Gramin Bank,
Orai District, Jalaun.

AWARD

1. The Central Govt., Ministry of Labour, vide its notification No. L-12012/460/86-D.IIA/D.IV(A) dated 6-1-85 has referred the following dispute for adjudication to this Tribunal :—

Whether the action of the management of Chhatrasal Gramin Bank in terminating the services of Sh. Krishna Kant Sharma Ex-Clerk w.e.f. 31-12-84, is justified? If not, to what relief the concerned workman is entitled?

2. In the instant case on 20-6-89, parties filed settlement requesting that the reference be decided in terms of the settlement. The settlement has duly been verified and signed by the parties representatives and by the workman too. The terms of settlement is—

1. It is agreed that the workman concerned Sh. Krishna Kant Sharma will be absorbed afresh with prospective date hereafter in the permanent cadre of clerk-cum-cashier in Chhatrasal Gramin Bank as per Bank's rules and regulations.

2. It is further agreed that the workman concerned, said Sh. Krishna Kant Sharma, voluntarily relinquishes his claim of back wages/allowances and the benefits whatsoever, of his past temporary services in the Chhatrasal Gramin Bank and as such Sh. Krishna Kant Sharma will never claim the same in future.

3. It is further agreed that the workman concerned Sh. Krishna Kant Sharma will be absorbed, as aforesaid, within 10 days of this settlement.

4. Thus this fully and finally resolves the entire matter of dispute under reference.

Thus in view of the above settlement the reference is answered accordingly.

ARJAN DEV, Presiding Officer

[No. L-12012/460/86-D.II(A)/D.IV(A)]

S. C. SHARMA, Desk Officer

नई दिल्ली, 6 अप्रैल, 1990

का. आ. 1082 औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में केन्द्रीय सरकार वेस्टन रेलवे, बम्बई के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-3-90 को प्राप्त हुआ था।

New Delhi, the 6th April, 1990

S.O. 1082.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2 Bombay

as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Western Railway, Bombay and their workmen, which was received by the Central Government on 20-3-90.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY.

Reference No. CGIT-2/32 of 1987

PARTIES :

Employers in relation to the management of
General Manager, Western Railway,
Bombay

AND

Their workmen.

APPEARANCES :

For the Employers : Shri P. R. Pai, Advocate.

For the workmen : Shri H. J. Acharya, Advocate.

INDUSTRY : Railways STATE : Maharashtra

Bombay, dated the 26th February, 1990

AWARD

The Central Government by their Order No. L-41012/19/86-D. II(B) dated 22-5-1987 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act :—

“Whether the action of the management of Western Railway in not paying to Shri H.J. Acharya, Lab. Supdt., J. R. Hospital, Bombay, the full share of the fee received by the Railway Administration on account of medical facilities extended to the non-railway patients from 1-10-1978 and onwards, for the tests conducted by Shri Acharya, is justified? If not, to what relief the concerned workman is entitled, and from what date?”

2. The case of the workman Shri H. J. Acharya, as disclosed from the statement of claim (Ex. 2/W) filed by him on behalf of Railway Laboratory Staff Association as its General Secretary, in short, is thus :—

The management of the Western Railway had invited applications for the post of Laboratory Superintendent in 1962 in the scale of Rs. 325-575 for analysis connected with the food, drugs and clinical Biochemistry. The workman Shri Acharya who had then passed M.Sc. examination possessed the necessary experience of more than two years, was selected for the said post and posted at J. R. Hospital, Bombay from 6-8-1962. He was asked to do biochemical analysis and develop public health Laboratory work. Thereafter, he further passed Associationship examination of the Institution of Chemists (India) in analysis of food and drugs Biochemical analysis. As such the workman is a qualified Chemist possessing two Post-Graduate degrees.

(ii) The said workman, on learning that the management is allowing non-railway patients to take the advantage of the facilities available on payment of certain charges which is shared by the management and the workers in the ratio of 60 : 40, requested the management to share the charges from biochemical analysis with him, as he was exclusively doing that work. However, this demand of the workman resulted in earning the displeasure from the Hospital authorities, and the request of the workman was not considered by the management. According to the workman, the policy of the management was to favour the Doctors. The Institution of Chemists (India) also sent a letter to the Chairman, Railway Board in that respect. However, the management did not pay any heed to it. In March 1974 or therebefore, the Railway Board had issued instructions to the Zonal Railways to grant a share to the non-medical staff, the Chief Medical Officer of the Western Railway granted 10% share to non-medical staff. While the workman was pursuing his demand for the share through various channels, the J. R. Hospital authorities where the workman is employed, by its order dated 10-10-1978 prevented the non-medical laboratory staff from signing the reports of analysis. This was done with the intention to deprive the non-medical members to share of their share. Prior to 1978, the members of non-medical Laboratory Staff were signing such reports. The said workman thereafter sent a letter dated 14-2-1980 to the Chief Medical Officer, and also sent a notice through his Advocate on 6-10-1980 demanding the share. As he did not get any response, he filed a Writ Petition in the High Court of Bombay in 1981. However, as the Advocate for the management made a statement before the High Court that the Railway Board would take a decision in the matter, the workman was allowed to withdraw that Writ Petition. Thereafter, the workman raised an industrial dispute with the Assistant Labour Commissioner (C), Bombay. However, as the Conciliation proceedings ended in failure, the Central Government was required to make the reference as above.

(iii) Since the workman joined the service in 1962 he was demanding 40% of the income from the non-Railway patients, but he was denied that share. In September 1975, the Chief Medical Officer issued an order granting the workman 10% share in common with other non-medical staff. However, that order was unacceptable to all the workmen. The management thereafter raised the share of other non-medical staff to 15% in common from 1978, but took no decision as regards the demand of the qualified Laboratory Superintendents at J. R. Hospital, Bombay and Ajmer. The workman is claiming full share of the money realised from chemical analysis. However, that was denied to him. The medical Officers are duly compensated by payment of non-practising

allowance. Therefore, the payment of the share money to the Medical Officers is unjust, illegal and tantamounts to double payments. The payment to the Medical Officers are made by depriving the non-medical staff of their just and fair share. The workman has, therefore, claimed the share as follows :—

- | | |
|----------------------------|-------------------|
| 1. Prior to 8-9-1975 | 40% of the income |
| 2. From 8-9-75 to 30-9-78 | 30% of the income |
| 3. From 1-10-78 to 25-9-85 | 20% of the income |
| 4. From 25-9-85 onwards | 8% of the income |

The workman, therefore, prayed that the management of the Western Railway be directed to pay the amounts of share to him as above, by passing the necessary orders in the matter.

3. The Senior Divisional Medical Officer, on behalf of the General Manager, Western Railway, by their written statement (Ex. 3[M]) contested and denied the claim of the workman, and in substance contended thus :—

The present reference is not proper and valid and is bad in law. The staff involved in this reference are not workmen within the meaning of the Industrial Disputes Act. The staff involved in this reference are governed by the service conditions which are statutory in nature and the claims put forward by them are not covered by any of the statutory rules or regulations, and as such, the claim of the workman is not tenable in law. It is true that the Railway administration was sharing the income from the outsiders in non-railway cases in the ratio of 60 : 40 with the workers. It was a policy decision taken after the right to practice was withdrawn from the Medical Officers. The workman was aware of the service conditions in the organisation vis-a-vis medical officers. Therefore, by virtue of his service conditions, he is not entitled to claim any share under the conditions of service applicable to the Group C, to which the workman belongs. Vis-a-vis the medical officers, he does not have any right to share the money. As per the service conditions and category of the workman there is no provision under which he or the group he represents, is entitled to claim any share in the non-railway income of the hospital. The authorities of the Railways, therefore prayed for the rejection of the workman's prayer.

4. The Issues framed at Ex. 4 are :—

- Whether the staff involved in the present reference are not 'workmen' within the meaning of Industrial Disputes Act ?
- Whether the reference in question is not valid, proper, is bad in law, and is not maintainable ?

3. Whether, as per the service conditions and the category of the workmen to which the present workman belongs, he or they are not entitled to any share in non-railway income of hospital etc. ?

4. Whether the action of the management of Western Railway in not paying to Shri H.J. Acharya, Lab. Supdt., J. R. Hospital, Bombay, the full share of the free received by the Railway Administration on account of medical facilities extended to the non-railway patients from 1-10-1978 and onwards for the tests conducted by Shri Acharya, is justified ?

5. If not, to what relief the concerned workman is entitled to, and from what date ?

6. What Award ?

5. My findings on the above said Issues are :—

- (1) Some are Workmen.
- (2) Tenable in law.
- (3) Are entitled ?
- (4) No.
- (5) As per final order.
- (6) As per final order.

REASONS

ISSUES NOS. 3, 4 and 5

6. The workman concerned Shri H. J. Acharya filed his affidavit in support of his case at Ex. 5[W]. He was cross-examined on behalf of the Railways. The management filed the affidavit of Dr. H. A. Nagpal, Surgeon, on behalf of the Railways. He was cross-examined on behalf of the workman. According to the Railway management, as per the service conditions and the category of the workmen to which the present workman and other workmen belong, he or they are not entitled to any share in the income from non-railway patients. However, absolutely, no document has been produced by the Railway management regarding the service conditions of the workmen in question, or to show that under which conditions of service the workmen are not entitled to claim the share as demanded by them. On the contrary, the workmen have produced documents to show that the concerned persons are entitled to claim the share as demanded by them. I will, therefore, refer to those documents first. Ex. 9 is a copy of letter dated 25-3-1974 by the Director of Health addressed to Dr. Malhotra, Chief Medical Officer, S. E. Railway, Calcutta and copy to all C.M.Os. In this letter, the Director of Health mentioned thus :—

"There have been valid allegations against doctors, that they have encouraged admission of non-railway patients with a view to earn some money in addition to the restricted private practice allowed otherwise.".....

"I would recommend that we completely debar the doctors from collecting any share out of investigation and operations done for outsiders in Railway Hospitals."

Thus, as per this letter, even the Doctors are debarred from claiming any share in the income from the non-Railway patients.

7. However, the other employees of the Railways have been authorised to claim such a share as can be seen from the following Documents.

Ex. 10 is a true copy of the letter dated 8-9-1975 by the Chief Medical Officer to the Additional CMO JRM/BCT and others. In this letter the Chief Medical Officer stated thus :—

“There has been representations from the Unions that para-medical staff like X-Ray staff and the Lab. Technicians are not getting any share from the fees recovered from the Non-Railway patients. It is suggested that the fees between the Radiologist/Pathologist may be shared with X-Ray staff/Lab. Technician, as the case may be, on the basis of 75% and 25%. However, when the work is done entirely by the Radiologist/Pathologist, he should be entitled for 100% share.”

Thus by this letter dated 8-9-75 (Ex. 10) the one suggestion made by the Chief Medical Officer was that the above mentioned technicians should also be granted the share in the income from the Non-Railway patients. However, the other letter (Ex. 11) dated 22-9-1979 is a very important document. Ex. 11 is a true copy of the letter by the Chief Medical Officer dated 22-9-1979 addressed to the ACO, JRH, BCT and others. The opening para. of this letter reads thus :—

“The question of sharing of fees received from non-railway cases amongst the doctor para-medical staff and other class IV staff has been discussed in detail with the representatives of the Western Railway Mazdoor Sangh, and it has been decided to further apportion the fees received by doctor with the other staff as under. This will have retrospective effect from 1-10-1978.”

The share to be given to Pathology Department is thus :—

“60% to the Railway Revenue.
20% to the Pathologist.
15% to the Technician.
5% to the Class IV staff.”

This letter further states that “this has the concurrence of FA & CAO and supercedes all the previous instructions issued in the matter.” Thus, from this letter issued by the Chief Medical Officer it is quite clear that some share in the income from the Non-Railway Patients was granted to Pathologists and Technicians. The workman Shri Acharya belongs to Pathology Department. As such, he and other employees are entitled to claim the share from the income from the non-Railway patients, in respect of the work done by them.

7 The management is, however, relying upon the letter dated 1-2-1980 by the Dy. Director, Railway Board addressed to Dr. Briimohan, Chief Medical Officer. By this letter instructions were issued thus :—

“While there is no bar to the qualified chemists signing the report of tests carried out by

them, the fees charged by the administration cannot be apportioned between the administration and the Laboratory Chemists, since according to the service conditions, the chemists are not permitted to undertake private practice and charge fee.”

It may be noted that this letter dated 1-2-1980 by the Dy. Director was circulated by the Chief Medical Officer by his letter dated 20-12-1980 (Ex. 12) amongst ACO, JR Hospital, BCT and others. Therefore, according to the management, the present employees are not entitled to claim any share in the income from the Non-Railway patients. However, the subsequent letter dated 13-6-1980 issued by the Director of Health, Ministry of Railways, Railway Board addressed to the Chief Medical Officer, All India Railways and Medical Supdt. CLW is important. This letter runs thus :—

“Reference Railway Ministry letter of even No. dated 17-4-1980, keeping in view the fact that Railways have arrived at certain decision in regard to apportionment of the Doctors with class III and Class IV para-medical staff in consultation with their FA & CAO, depending on the local conditions, in terms of para. 619 of IRMM. The Railway Ministry have decided that existing practice may continue as hitherto.”

Thus, as per this letter dated 13-6-1980 which has been issued subsequent to the earlier letter dated 1-2-1980 (Ex. 13), class III and Class IV para-medical staff are to get as per the existing practice. Thus the existing practice prior to the issue of this letter dated 13-6-1980 is thus :—As per the letter dated 8-9-1975 (Ex. 10) it was suggested that the fees between the Radiologist/Pathologist may be shared with X-Ray staff/Lab. Technician in the income from the non-Railway patients, and the other letter dated 22-9-1979 (Ex. 11) under which clear directions were issued by the Chief Medical Officer that 40% of the Income from the non-Railway patients was to be distributed amongst Pathologist, Technicians and Class IV employees etc. Therefore I find that in view of this letter dated 13-6-1980 (Ex. 13) the workmen concerned are again made entitled to claim the share, as claimed by them.

8. The management witness Dr. Nagpal stated and admitted in his cross-examination thus :—

There are prescribed charges (Amounts) laid down for different types of work. At present the amounts are distributed as per the ratio—60% of the amounts are given to the Railway administration and 40% are distributed amongst Doctors and workers, i.e. 20% to Doctors and 20% to the workers.

The attention of the witness was drawn to above said letter dated 13-6-1980 (Ex. 13) under which the existing practice was to continue. The witness stated that this letter was not over-ruled by the authorities concerned and this letter was implemented. He further stated that the management is still paying the share to para-medical staff. Therefore, in view of these admissions made by the witness for the management and the documentary evidence, as above, I find that the Laboratory Supdt. in question and the other workmen concerned are entitled to claim the share in

the income from the Non-Railway patients as per the directions given in the letter dated 22-9-1979, which was the retrospective effect from 1-10-1978. I find that the employees concerned are entitled to claim the share in the income from Non-Railways patients with effect from 1-10-1978 and not from 1962 i.e. from the year in which the concerned Laboratory Supdt. entered in the service, or from the year 1975 as claimed by him. Therefore, the finding on Issue No. 4 is that the action of the Railway Management in not paying to Shri H. J. Acharya, Lab. Supdt. a share of the fee received by the Railway administration on account of medical facilities extended to the non-Railway patients from 1-10-1978 for the tests conducted by him, is not justified, and as such, he is entitled to the share as per the said letter dated 22-9-1979 (Ex. 11) with effect from 1-10-1978. Issues Nos. 4 and 5 are found accordingly.

9. As noted above, no documents regarding the service conditions of the employees have been produced by the management. Therefore, my finding on Issue No. 3 is that the workmen are entitled to claim the share.

ISSUE NO. 2

10. It is contended that the reference in question is not valid, proper, is bad in law, and is not maintainable. I do not find that it is suffering from any infirmities. I, therefore, find it is quite valid, proper and not bad in law. Issue No. 2 is found accordingly.

ISSUE NO. 1

11. According to the Railway management, the staff members involved in the present reference are not 'workmen' within the meaning of Industrial Disputes Act. The witness of the management Dr. Nagpal stated in his cross-examination that he does not know which categories of the staff are workmen and which are not under the provisions of the Industrial Disputes Act. However, he stated that according to him, the Laboratory Sundt. is a workman under the Industrial Disputes Act. The Laboratory Superintendent Shri Acharya stated in his cross-examination that the present reference relates to him only. However, he further stated that all workmen concerned in this reference are the Railway employees and they are governed by the Railway rules and as such this reference relates to him and some other workmen also. He further stated in his cross-examination that the staff involved in the present reference consists of supervisory and non-supervisory, and he does not know about their emoluments. I, therefore, find that some of

these workmen are 'workmen' and some are not workmen within the meaning of Section 2(s) of the Industrial Disputes Act. However, I find that the present reference is quite tenable in law even though some of the employees may not be workmen. As per the definition the term 'industrial dispute' as contained in Section 2(k) of the Industrial Disputes Act, an 'industrial dispute' means any dispute or difference between employers and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. Therefore, as the dispute relates to terms of employment or with conditions of labour, the present reference, even though the Laboratory Superintendent or any other employees may not be workmen, is quite tenable in law under Section 10(1)(d) of the Industrial Disputes Act. Therefore, my finding on Issue No. 1 is that the present reference is tenable in law, and the Laboratory Superintendent Shri Acharya is a 'workman' under Section 2(s) of the Industrial Disputes Act.

ISSUE NO. 6

12. Therefore, the following Award is passed.

AWARD

The action of the management of Western Railway in not paying to Shri H. J. Acharya, Lab. Superintendent, J.R., Hospital, Bombay, the share of the fee received by the Railway Administration on account of medical facilities extended to the non-railway patients from 1-10-1978 and onwards for the tests conducted by him, is not just and proper. The action of the management in not paying any share to other employees connected with the Laboratory is also not just and proper. The Railway management is directed to make the necessary calculations and pay the necessary amounts to the Laboratory Superintendent Shri H. J. Acharya, due from 1-10-1978 and also to the other members of Laboratory staff as per the letter of the Chief Medical Officer dated 22-9-1979, within three months from today. The parties to bear their own costs of this reference.

P. D. APSHANKAR, Presiding Officer

[No. L-41012/19/86-D.II(B) (Pt.)]

HARI SINGH, Desk Officer